

CHEMICAL FACILITY ANTI-TERRORISM ACT OF 2008

MARCH 14, 2008.—Ordered to be printed

Mr. THOMPSON of Mississippi, from the Committee on Homeland Security, submitted the following

R E P O R T

together with

MINORITY, ADDITIONAL, AND DISSENTING VIEWS

[To accompany H.R. 5577]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 5577) to amend the Homeland Security Act of 2002 to extend, modify, and recodify the authority of the Secretary of Homeland Security to enhance security and protect against acts of terrorism against chemical facilities, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

The purpose of H.R. 5577 is to amend the Homeland Security Act of 2002 to extend, modify, and recodify the authority of the Secretary of Homeland Security to enhance security and protect against acts of terrorism against chemical facilities, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

In 1984, a chemical facility in Bhopal, India accidentally released 40 tons of methyl isocyanate. The initial exposure killed approximately 3,000 people, and at least 15,000 more have died from illnesses related to the accident. The tragic event in Bhopal was an accident; the consequences of a deliberate terrorist attack could be much worse.

Chemical facilities are an integral part of the United States economy, generating \$550 billion in annual revenues. These facilities, often located in densely populated areas, hold many chemicals that can cause serious harm to humans and the environment if used maliciously or without sufficient care. Storage and use of potentially dangerous or hazardous chemicals near large populations centers, as well as their economic importance, make U.S. chemical facilities attractive terrorist targets. As a result, the Chemical Sector is among the 17 critical infrastructure and key resources (CI/KR) sectors under the National Infrastructure Protection Plan, pursuant to Homeland Security Presidential Directive-7 (HSPD-7).

Section 550 of the Homeland Security Appropriations Act of 2007 (P.L. 109-295) authorizes the Department of Homeland Security (Department) to regulate the Nation's chemical facilities. Pursuant to that mandate, the Department issued the Chemical Facility Anti-Terrorism Standards (CFATS) in June 2007. These standards require chemical facilities to report the amounts and types of chemicals on site so that the Department can determine whether a facility will be further regulated by CFATS rules. The Secretary will place regulated facilities into one of four tiers, based on risk and performance. The facilities placed in the highest-risk tier will be subject to the most stringent security required. The CFATS regulations, which have only recently begun to be implemented, will sunset in October 2009.

Because the continued regulation of our Nation's chemical facilities is essential for the protection of our citizens against terrorist attacks, this legislation is needed to continue the implementation of CFATS regulations. H.R. 5577 requires each CFATS-regulated chemical facility to conduct a security vulnerability assessment and subsequently implement a site security plan, as well as empowering the Department to inspect these facilities and ensure compliance. The Committee intends for H.R. 5577 to extend and make permanent the CFATS regime with some modifications. The current CFATS regulations will be improved, not disrupted, by this legislation.

HEARINGS

On December 12, 2007, the Subcommittee on Transportation Security and Infrastructure Protection held a hearing on H.R. 5577, the "Chemical Facility Anti-Terrorism Act of 2008." The Sub-

committee received testimony from Col. Robert B. Stephan, Assistant Secretary, Infrastructure Protection, U.S. Department of Homeland Security; Mr. Clyde Miller, Director, Corporate Security, BASF Corporation; Mr. Gerald C. Setley, Vice President, Region 3 Director, International Chemical Workers Union Council, United Food and Commercial Workers Union; Mr. Gary Sondermeyer, Director of Operations, New Jersey Department of Environmental Protection; and Dr. M. Sam Mannan, PE, CSP, Professor and Director, Mary Kay O'Connor Process Safety Center, Artie McFerrin, Department of Chemical Engineering, Texas A&M University System.

On February 26, 2008, the Full Committee held a hearing on a Committee Print entitled "Chemical Facility Anti-Terrorism Act of 2008." The Committee received testimony from Col. Robert B. Stephan, Assistant Secretary, Department of Homeland Security; David C. Pulham, Ph.D., Director of Compliance, Siegfried (USA), Inc.; and Mr. Kevin Wattier, General Manager, Long Beach Water Department.

COMMITTEE CONSIDERATION

SUBCOMMITTEE ON TRANSPORTATION SECURITY AND INFRASTRUCTURE PROTECTION CONSIDERATION

The Subcommittee on Transportation Security and Infrastructure Protection of the Committee on Homeland Security met, pursuant to notice, in open markup session, a quorum being present, on Wednesday, January 23, 2008, and ordered a Committee Print entitled "To amend the Homeland Security Act of 2002 to extend, modify, and recodify the authority of the Secretary of Homeland Security to enhance security and protect against acts of terrorism against chemical facilities, and for other purposes." to be forwarded to the Full Committee for consideration, as amended, by unanimous consent.

The Subcommittee adopted the bill, as amended, by voice vote.

The following amendments were offered:

An amendment offered by Ms. Jackson-Lee (#1), to strike the proposed section 2114 insert a new section 2114 entitled "Sec. 2114. Office of Chemical Facility Security." and to insert after section 2102 (d) a new section entitled "(e) Dissemination of Best Practices."; was AGREED TO by voice vote.

An amendment offered by Ms. Brown-Waite (#2), to insert a new section after section 2115 entitled "Sec. 2116. Terrorist Watchlist and Immigration Status Review Required for Certain Employees of High-Risk Chemical Facilities."; was NOT AGREED TO by a record vote of 4 yeas and 5 nays (Roll Call Vote No. 3).

FULL COMMITTEE CONSIDERATION

The Committee on Homeland Security met on March 6, 2008, to consider a Committee print entitled "Chemical Facility Anti-Terrorism Act of 2008."

The Committee took the following actions:

A Committee Print, entitled "To amend the Homeland Security Act of 2002 to extend, modify, and recodify the authority of the Secretary of Homeland Security to enhance security and protect against acts of terrorism against chemical facilities, and for other purposes." The "Chemical Facility Anti-Terrorism Act of 2008."; was AGREED TO, as amended, by record vote of 15 yeas and 7 nays (Roll Call Vote No. 16).

Unanimous consent request by Mr. Thompson that, upon referral of this bill to the Committee on Homeland Security, upon introduction, the bill be deemed reported to the House; was not objected to.

A motion by Mr. Broun to postpone consideration of the Committee Print until the House of Representatives has considered S. 2248 was TABLED.

A motion by Mr. Dicks to table the motion by Mr. Broun to postpone the consideration of the Committee Print until the House of Representatives has considered S. 2248 was AGREED TO by a record vote of 15 yeas and 11 nays (Roll Call Vote No. 12).

The Committee then proceeded to the consideration of the Committee Print.

The following amendments were offered:

An En Bloc Amendment offered by Mr. Thompson (#1); to (1) strike subsection (g) of the proposed section 2103 and insert a new subsection entitled "Role of Employees"; (2) on page 37, line 1, strike "The Secretary" and all that follows through the period on line 6 and insert the following: "Notwithstanding the preceding sentence, the Secretary may not issue an order to cease operations under this paragraph to the owner or operator a drinking water or wastewater facility unless the Secretary determined that continued operation of the facility represents a clear and present danger to homeland security."; (3) in the proposed section 2110(b)(1)(C), insert before the period at the end of the following: "at a location within the United States"; (4) at the end of the proposed section 2110, insert a new subsection entitled "(g) Publicly-owned Water and Wastewater Treatment Facilities."; and (5) in Sec. 2115, at the end of Subsec (a): In establishing this or any chemical, biological, and/or agricultural Centers of Excellence, or in reorganizing existing Centers in these areas, the Secretary shall recognize the unique scientific, technical, and funding requirements of the chemical, biological and/or agricultural fields to the mission of the Department of Homeland Security, and maintain such centers as distinct entities in organization and funding.; was AGREED TO by voice vote.

An Amendment offered by Mr. Lungren (#2), on p. 54, line 18, after "covered chemical facility" insert "assigned to a high-risk tier under section 2102(C)(3)".; was NOT AGREED TO by a record vote of 11 yeas and 16 nays (Roll Call Vote No. 13).

An Amendment offered Mr. Perlmutter (#3), to strike the proposed section 2114 and insert the following new section 2114 entitled "Sec. 2114. Security Background Checks of Covered Individuals at Certain Chemical Facilities."; was AGREED TO by voice vote.

An Amendment offered by Mr. Souder (#4), on page 10, line 14, before the semicolon insert the following: "relating to security of the facility."; and page 10, line 18, insert "security" before "performance".; was AGREED TO by voice vote.

An Amendment offered by Mr. Souder (#5), on page 20, line 1, insert after “include” the following: “, to the extent feasible,”; was NOT AGREED TO by voice vote.

An Amendment offered Mr. Souder (#6), Page 56, line 8, strike “and”; page 56, line 12, strike the period and insert the following: “; and”; page 56, after line 12, insert a new subsection (D); was NOT AGREED TO by a record vote of 8 yeas and 13 nays (Roll Call Vote No. 14).

An Amendment offered by Mr. Souder (#7), Page 57, after line 6, insert a new subsection “(3) Exception.”; was NOT AGREED TO by a record vote of 8 yeas and 13 nays (Roll Call Vote No. 15).

An amendment offered by Mr. Broun (#8) (#3A), in the proposed section 2114, redesignate subsections (c) through (h) as subsections (d) through (I), respectively.; Page 4, after line 3, insert a new subsection “(c) Termination of Employment,”; page 2, line 8, strike “(c)” and insert “(d)”.; page 2, line 21, strike “subsection (c)” and insert “subsection (d)”.; was WITHDRAWN by unanimous consent.

A unanimous consent request by Mr. Broun to withdraw his amendment, was not objected to.

A motion by Mr. Thompson that staff is authorized to make any technical and conforming changes to the measures considered today, was not objected to.

A motion by Ms. Sanchez to authorize the Chairman to offer such motions as may be necessary in the House to go to Conference with the Senate on the bills just ordered reported by this Committee, or on a similar Senate bill, was not objected to.

A motion by Mr. King that pursuant to Rule XIII clause 2(c) of the Rules of the House of Representatives Members may have two days in which to file Minority and additional views on each of the measures considered, was not objected to.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto.

FULL COMMITTEE VOTES

Committee on Homeland Security

Date: Thursday, March 6, 2008

Vote on: A motion by Mr. Dicks to table the motion by Mr. Broun to postpone the consideration of the Committee Print until the House of Representatives has considered S. 2248. Was AGREED to by a record vote of 15 yeas and 11 nays (Roll Call Vote No. 12.) As follows:

Recorded Vote Number: 12 Total: Yeas 15 Nays 11

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Bennie G. Thompson	✓			Mr. Peter T. King		✓	
Ms. Loretta Sanchez	✓			Mr. Lamar Smith			
Mr. Edward J. Markey				Mr. Christopher Shays			
Mr. Norman D. Dicks	✓			Mr. Mark E. Souder		✓	

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Ms. Jane Harman	✓			Mr. Tom Davis		✓	
Mr. Peter A. DeFazio	✓			Mr. Daniel E. Lungren		✓	
Mrs. Nita M. Lowey				Mr. Mike Rogers		✓	
Ms. Eleanor Holmes Norton				Mr. David G. Reichert		✓	
Ms. Zoe Lofgren				Mr. Michael T. McCaul		✓	
Ms. Sheila Jackson-Lee	✓			Mr. Charles W. Dent		✓	
Mrs. Donna M. Christensen	✓			Mr. Ginny Brown-Waite			
Mr. Bob Etheridge	✓			Ms. Gus M. Bilirakis		✓	
Mr. James R. Langevin	✓			Mr. David Davis		✓	
Mr. Henry Cuellar	✓			Mr. Paul C. Broun		✓	
Mr. Christopher P. Carney	✓			Vacancy			
Ms. Yvette D. Clarke	✓					
Mr. Al Green	✓					
Mr. Ed Perlmutter	✓					
Mr. Bill Pascrell, Jr.	✓			Total	15	11	

Committee on Homeland Security

Date: Thursday, March 6, 2008

Vote on: An Amendment offered Mr. Lungren (#2), on p. 54, line 18, after “covered chemical facility” insert “assigned to a high-risk tier under section 2102(C)(3)”. Was NOT AGREED to by a record vote of 11 yeas and 16 nays (Roll Call Vote No. 13.) As follows:

Recorded Vote Number: 13 Total: Yeas 11 Nays 16

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Bennie G. Thompson		✓		Mr. Peter T. King	✓		
Ms. Loretta Sanchez		✓		Mr. Lamar Smith	✓		
Mr. Edward J. Markey		✓		Mr. Christopher Shays			
Mr. Norman D. Dicks		✓		Mr. Mark E. Souder	✓		
Ms. Jane Harman		✓		Mr. Tom Davis	✓		
Mr. Peter A. DeFazio		✓		Mr. Daniel E. Lungren	✓		
Mrs. Nita M. Lowey				Mr. Mike Rogers			
Ms. Eleanor Holmes Norton				Mr. David G. Reichert	✓		
Ms. Zoe Lofgren				Mr. Michael T. McCaul	✓		
Ms. Sheila Jackson-Lee		✓		Mr. Charles W. Dent	✓		
Mrs. Donna M. Christensen		✓		Mr. Ginny Brown-Waite			
Mr. Bob Etheridge		✓		Ms. Gus M. Bilirakis	✓		

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. James R. Langevin		✓		Mr. David Davis	✓		
Mr. Henry Cuellar		✓		Mr. Paul C. Broun	✓		
Mr. Christopher P. Carney		✓		Vacancy			
Ms. Yvette D. Clarke		✓					
Mr. Al Green		✓					
Mr. Ed Perlmutter		✓					
Mr. Bill Pascrell, Jr.		✓		Total	11	16	

Committee on Homeland Security

Date: Thursday, March 6, 2008

Vote on: An Amendment offered Mr. Souder (#6), Page 56, line 8, strike “and”.; page 56, line 12, strike the period and insert the following: “; and”.; page 56, after line 12, insert a new subsection (D). Was NOT AGREED to by a record vote of 8 yeas and 13 nays (Roll Call Vote No. 14.) As follows:

Recorded Vote Number: 14 Total: Yeas 8 Nays 13

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Bennie G. Thompson		✓		Mr. Peter T. King	✓		
Ms. Loretta Sanchez		✓		Mr. Lamar Smith			
Mr. Edward J. Markey		✓		Mr. Christopher Shays			
Mr. Norman D. Dicks				Mr. Mark E. Souder	✓		
Ms. Jane Harman				Mr. Tom Davis			
Mr. Peter A. DeFazio		✓		Mr. Daniel E. Lungren			
Mrs. Nita M. Lowey				Mr. Mike Rogers			
Ms. Eleanor Holmes Norton				Mr. David G. Reichert	✓		
Ms. Zoe Lofgren				Mr. Michael T. McCaul	✓		
Ms. Sheila Jackson-Lee		✓		Mr. Charles W. Dent	✓		
Mrs. Donna M. Christensen		✓		Mr. Ginny Brown-Waite			
Mr. Bob Etheridge		✓	DMS. Gus M. Bili- rakis	✓			
Mr. James R. Langevin				Mr. David Davis	✓		
Mr. Henry Cuellar		✓		Mr. Paul C. Broun	✓		
Mr. Christopher P. Carney		✓		Vacancy			
Ms. Yvette D. Clarke		✓					
Mr. Al Green		✓					
Mr. Ed Perlmutter		✓					
Mr. Bill Pascrell, Jr.		✓		Total	8	13	

Committee on Homeland Security
Date: Thursday, March 6, 2008

Vote on: An Amendment offered Mr. Souder (#7), Page 57, after line 6, insert a new subsection "(3) Exception.". Was NOT AGREED to by a record vote of 8 yeas and 13 nays (Roll Call Vote No. 15.)
As follows:
Recorded Vote Number: 15 **Total:** Yeas 8 Nays 13

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Bennie G. Thompson		✓		Mr. Peter T. King	✓		
Ms. Loretta Sanchez		✓		Mr. Lamar Smith			
Mr. Edward J. Markey		✓		Mr. Christopher Shays			
Mr. Norman D. Dicks				Mr. Mark E. Souder	✓		
Ms. Jane Harman				Mr. Tom Davis			
Mr. Peter A. DeFazio		✓		Mr. Daniel E. Lungren			
Mrs. Nita M. Lowey				Mr. Mike Rogers			
Ms. Eleanor Holmes Norton				Mr. David G. Reichert	✓		
Ms. Zoe Lofgren				Mr. Michael T. McCaul	✓		
Ms. Sheila Jackson-Lee		✓		Mr. Charles W. Dent	✓		
Mrs. Donna M. Christensen		✓		Mr. Ginny Brown-Waite			
Mr. Bob Etheridge		✓		Ms. Gus M. Bilirakis	✓		
Mr. James R. Langevin				Mr. David Davis	✓		
Mr. Henry Cuellar		✓		Mr. Paul C. Broun	✓		
Mr. Christopher P. Carney		✓		Vacancy			
Ms. Yvette D. Clarke		✓					
Mr. Al Green		✓					
Mr. Ed Perlmutter		✓					
Mr. Bill Pascrell, Jr.		✓		Total	8	13	

Committee on Homeland Security
Date: Thursday, March 6, 2008

Vote on: Agreeing to the Committee Print, as amended. Was AGREED to by a record vote of 15 yeas and 7 nays (Roll Call Vote No. 16.) **As follows:**
Recorded Vote Number: 16 **Total:** Yeas 15 Nays 7

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Bennie G. Thompson	✓			Mr. Peter T. King		✓	
Ms. Loretta Sanchez	✓			Mr. Lamar Smith			
Mr. Edward J. Markey	✓			Mr. Christopher Shays	✓		
Mr. Norman D. Dicks				Mr. Mark E. Souder		✓	

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Ms. Jane Harman				Mr. Tom Davis			
Mr. Peter A. DeFazio	✓			Mr. Daniel E. Lungren			
Mrs. Nita M. Lowey				Mr. Mike Rogers			
Ms. Eleanor Holmes Norton				Mr. David G. Reichert		✓	
Ms. Zoe Lofgren				Mr. Michael T. McCaul		✓	
Ms. Sheila Jackson-Lee	✓			Mr. Charles W. Dent	✓		
Mrs. Donna M. Christensen	✓			Mr. Ginny Brown-Waite			
Mr. Bob Etheridge	✓			Ms. Gus M. Bilirakis		✓	
Mr. James R. Langevin				Mr. David Davis		✓	
Mr. Henry Cuellar	✓			Mr. Paul C. Broun		✓	
Mr. Christopher P. Carney	✓			Vacancy			
Ms. Yvette D. Clarke	✓						
Mr. Al Green	✓						
Mr. Ed Perlmutter	✓						
Mr. Bill Pascrell, Jr.	✓			Total	15	7	

SUBCOMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE VOTES

Subcommittee on Transportation Security and Infrastructure Protection

Date: Wednesday, January 23, 2008

Vote on: An amendment offered by Ms. Brown-Waite (#2), to insert a new section after section 2115 entitled "Sec. 2116. Terrorist Watchlist and Immigration Status Review Required for Certain Employees of High-Risk Chemical Facilities." Was NOT AGREED to by a record vote of 4 yeas and 5 nays (Roll Call Vote No. 3.) As follows:

Recorded Vote Number: 3 Total: Yeas 4 Nays 5

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Ms. Sheila Jackson-Lee		✓		Mr. Daniel E. Lungren	✓		
Mr. Edward J. Markey		✓		Ms. Ginny Brown-Waite	✓		
Mr. Peter A. DeFazio				Mr. Gus Bilirakis	✓		
Ms. Eleanor Holmes Norton		✓		Mr. Paul C. Broun	✓		
Ms. Yvette D. Clarke		✓					
Mr. Ed Perlmutter		✓		Total	4	5	

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held oversight hearings and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 5577, the Chemical Facility Anti-Terrorism Act of 2008, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

H.R. 5577—Chemical Facility Anti-Terrorism Act of 2008

Summary: H.R. 5577 would authorize the appropriation of \$900 million over the 2010–2012 period for the Department of Homeland Security (DHS) to regulate the security of chemical facilities across the United States (that is, facilities where certain types of chemicals are used, stored, manufactured, processed, or distributed). The bill would establish a chemical security office within DHS to carry out the provisions of this legislation, including conducting audits and inspections of the nation's chemical facilities. In addition, CBO estimates that DHS would need funding of \$283 million for fiscal year 2013 to continue to carry out those activities.

Assuming appropriation of the necessary amounts, we estimate that implementing H.R. 5577 would cost about \$1.1 billion over the 2010–2013 period. In addition, enacting the bill could affect direct spending and receipts, but we estimate that any such effects would not be significant.

H.R. 5577 would impose several intergovernmental mandates, as defined in the Unfunded Mandates Reform Act (UMRA), including new requirements on publicly owned chemical facilities as well as preemptions of state and local laws. Based on information from DHS and representatives of publicly owned facilities, CBO estimates that additional costs for those facilities would not be significant. CBO further estimates that the cost of the other intergovernmental mandates (mostly preemptions) in the bill would be small, and therefore, that the total costs to state, local, and tribal governments would not exceed the annual threshold established in UMRA (\$68 million for intergovernmental mandates in 2008, adjusted annually for inflation).

H.R. 5577 also would extend and impose new private-sector mandates, as defined in UMRA, on owners and operators of certain types of chemical facilities. Based on information from industry sources and DHS, CBO expects that the aggregate direct cost of complying with those mandates would likely exceed the annual threshold established in UMRA for private-sector mandates (\$136 million in 2008, adjusted annually for inflation) in at least one of the first five years the mandates are in effect.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 5577 is shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice).

	By fiscal year, in millions of dollars—					
	2008	2009	2010	2011	2012	2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION ^a						
Estimated Authorization Level ^b	0	0	325	300	275	283
Estimated Outlays	0	0	260	305	280	282

^a In addition to the amounts shown above, enacting H.R. 5577 could affect revenues and direct spending, but CBO estimates that any such effects would not be significant in any year.

^b The authorization levels for 2010 through 2012 are specified by H.R. 5577; CBO estimated the 2013 level.

Basis of estimate: CBO estimates that implementing H.R. 5577 would cost about \$1.1 billion over the 2010–2013 period, assuming appropriation of the necessary funds. Enacting the bill could affect direct spending and revenues, but we estimate that any effects would be insignificant.

Spending Subject to Appropriation

FOR THIS ESTIMATE, CBO ASSUMES THAT THE NECESSARY AMOUNTS WILL BE APPROPRIATED FOR EACH FISCAL YEAR AND THAT SPENDING WILL FOLLOW THE HISTORICAL SPENDING PATTERNS FOR THOSE OR SIMILAR ACTIVITIES.

H.R. 5577 would authorize the appropriation of \$900 million over the 2010–2012 period for DHS to regulate the security of chemical facilities in the United States. In addition, CBO estimates that implementing the bill would require funding of \$283 million in 2013 for DHS to continue to carry out the bill's activities. We estimated the 2013 level by adjusting the 2012 level for anticipated inflation.

Direct Spending and Revenues

Enacting H.R. 5577 could affect direct spending and receipts because the bill would establish new civil and criminal penalties against owners and operators of chemical facilities and officers or employees of federal, state, or local government agencies who fail to comply with the bill's requirements. Civil fines are recorded as revenues and deposited in the Treasury. Criminal fines are recorded as revenues, then deposited in the Crime Victims Fund, and later spent. CBO expects that any additional revenues and direct spending would not be significant because of the small number of cases affected.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS:

H.R. 5577 would impose intergovernmental mandates, as defined in UMRA, on owners and operators of chemical facilities, including public entities. The bill also would preempt state, local, and tribal authority. Because some of the requirements on chemical facilities would depend on future actions of DHS, CBO cannot determine their exact costs. However, based on information from DHS and representatives of public entities, CBO estimates that additional costs for public facilities would not be significant. CBO further estimates that the cost of the other intergovernmental mandates in the

bill would be small. Therefore, the total costs to state, local, and tribal governments would not exceed the annual threshold established in UMRA (\$68 million for intergovernmental mandates in 2008, adjusted annually for inflation).

Requirement for Vulnerability Assessments and Security Plans

H.R. 5577 would require owners and operators of affected facilities to conduct an assessment of the vulnerability of their facilities, identify the hazards that may result from a substance's release, and develop and implement a security plan to prevent or respond to those releases. H.R. 5577 would further require owners and operators to maintain records at the facility, provide access for DHS officials, require background checks on employees with access to restricted areas, and provide training to employees. Those facilities would be prohibited from firing or otherwise discriminating against an employee who provides information to DHS regarding vulnerabilities at a chemical facility.

Similar activities are required under current law, but those requirements expire in 2009; however, some public entities, such as drinking water and wastewater treatment facilities, are exempt from those regulations. This bill would require such facilities to comply with the requirements. The bill also would extend existing mandates on certain public entities that are not exempt from the current regulations and impose new intergovernmental mandates on entities that are considered to be high risk.

According to government and industry representatives, many of the public facilities potentially affected by the bill's provisions are currently engaged in activities similar to those that would be required under H.R. 5577. Such facilities are acting either in response to the terrorist attacks of September 11, 2001, as a condition of membership with chemical industry associations, or to comply with the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, the Maritime Transportation Security Act, or other federal regulations. Based on information from DHS, CBO expects DHS to assign most public water facilities to the lowest tier of risk and to consider activities that the facilities are currently doing to be sufficient. Assuming public facilities would not be required to undertake significant new activities, CBO expects that those mandates would impose few additional costs on those facilities.

Other Intergovernmental Mandates

The bill also contains two preemptions of state and local authority. It would exempt certain security plans and documents from state and local laws that provide public access to information and preempt any state or local regulation that would conflict with the security activities authorized by this bill. CBO estimates that costs, if any, of those preemptions would be small.

Estimated impact on the private sector: H.R. 5577 would extend and impose new private-sector mandates, as defined in UMRA, on owners and operators of certain types of chemical facilities. Based on information from industry sources and DHS, CBO expects that the aggregate direct cost of complying with those mandates would likely exceed the annual threshold established in UMRA for private-sector mandates (\$136 million in 2008, adjusted annually for

inflation) in at least one of the first five years the mandates are in effect.

Extension of Mandates on Chemical Facilities

The bill would extend and modify certain regulations known as the Chemical Facility Anti-Terrorism Standards (CFATS) that were issued under Public Law 109–295 and are set to expire in October 2009. H.R. 5577 would extend the requirement that DHS maintain a list of chemical facilities based on criteria in the bill, assign each such facility to one of at least four risk-based tiers, and develop security standards and procedures for facilities on the list.

Based on regulations developed by DHS, owners and operators of those chemical facilities would be required to conduct an assessment of the vulnerability of their facility to a terrorist incident, and prepare and implement a security plan that addresses the results of the vulnerability assessment. The bill also would require the owners and operators of such facilities to maintain a current copy of the assessment and plan at their facility and to allow DHS access to their property for security inspections and verifications. In addition, owners and operators would be required to periodically submit a review of the adequacy of the vulnerability assessment or facility security plan that includes a description of any changes made to the assessment or plan. The bill also would extend certain protections for employees in the event that they submit a report to DHS regarding problems, deficiencies, or vulnerabilities at a chemical facility.

According to industry sources and DHS, most facilities are currently engaged in the assessments and planning that would be required under this bill as a part of complying with the current regulations. The cost to chemical facilities of extending those requirements would depend, in part, on the number of facilities that will have completed their vulnerability assessments and security plans before the sunset of the CFATS regulations. Based on information from DHS and industry sources on the expected schedule of requirements for facilities, CBO expects that the incremental cost to the industry to comply with the extension of the security standards and procedures outlined in the bill would be substantial and would likely exceed the annual threshold established in UMRA in at least one of the first five years those requirements are in effect.

New Mandates on Chemical Facilities

H.R. 5577 also would impose new mandates, as defined in UMRA, on owners and operators of chemical facilities covered under the bill. Those new mandates would not impose substantial costs on those owners and operators.

Mandates on High-Risk Facilities. The bill would require owners and operators of high-risk chemical facilities to conduct a specific assessment of methods to reduce the impacts of a terrorist attack on the facility. If the Secretary determines that specific methods are necessary for a facility to reduce those impacts, the owner or operator of the facility would be required to implement such methods. The bill also would require DHS to make funds available to help defray some of the cost of implementing those methods. Because the facilities that would be affected and the types of methods

to be required depend on future regulatory actions, CBO cannot estimate the cost of this mandate.

The bill also would require owners and operators of high-risk chemical facilities to:

- Allow DHS to conduct certain risk management exercises (called red team exercises) at their facilities;
- Submit to DHS an addendum to the facility's security vulnerability assessment or site security plan to reflect any additional requirements of this act if they have already submitted an assessment and plan under current regulations; and
- Conduct security background checks of individuals who have access to restricted areas or critical assets.

Based on information from DHS and the industry, CBO expects that the cost of complying with those mandates would not be substantial compared with the annual threshold.

Training Requirement. Under the bill, the owner or operator of a chemical facility required to submit a site security plan would be required to annually provide each employee of the facility with a minimum of eight hours of training. The training would include such topics as the identification and discussion of substances that pose a certain level of risk to the workforce, emergency response providers, and the community. According to DHS and industry representatives, all covered chemical facilities currently provide similar training for their employees so that the incremental cost to those facilities should be minimal compared with the annual threshold.

Estimate prepared by: Federal Costs: Mark Grabowicz; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 5577, contains the following general performance goals, and objectives, including outcome related goals and objectives authorized.

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 5577 contains the following general performance goals, and objectives, including outcome related goals and objectives authorized.

The purpose of this legislation is to amend the Homeland Security Act of 2002 to extend, modify, and renew the authority of the Secretary of Homeland Security to enhance security and protect against acts of terrorism against chemical facilities, and for other purposes, including:

- Designation of certain chemical substances as substances of concern and establishing a threshold quantity for each substance of concern;
- Assignment by the Secretary of each covered chemical facility to one of four or more risk-based tiers established by the Secretary and periodic review by the Secretary of the criteria under which covered chemical facilities are assigned to risk-based tiers or by which chemical facilities are designated as covered facilities;

Establishing security requirements for covered chemical facilities including security vulnerability assessments and site security plans;

Exercises conducted by the Secretary at chemical facilities that have been assigned to a high-risk tier during the six-year period that begins on the effective date of the regulations promulgated under this legislation;

Development, documentation, and updating of minimum standard operating procedures and requirements by the Secretary for certain third-party entities;

Submission of an annual report to relevant Congressional Committees on the award of third-party entity contracts to small business concerns during the preceding fiscal year;

Requiring all covered chemical facilities assigned to a risk-based tier to conduct an assessment of the feasibility of methods to reduce the consequences of a terrorist attack, and allowing the Secretary to require implementation, of such methods, on a case-by-case basis, for high-risk facilities;

Making funds available to help defray the cost of implementing methods to reduce the consequences of a terrorist attack to covered chemical facilities that are required by the Secretary to implement such methods or that voluntarily choose to implement such methods;

Requiring adequate processes for redress for a covered individual subjected to an adverse employment decision, including removal or suspension, due to compliance with the provisions and regulations promulgated under section 2114 of this legislation;

Issuing a regulation that prohibits a covered chemical facility from knowingly misrepresenting to an employee or labor arbiter the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the Secretary related to security background check requirements not later than one year after the date of enactment of this legislation;

Submission of an annual report to Congress by the Secretary on progress in achieving compliance with title XXI of the Homeland Security Act of 2002, as added by section 4 of this legislation, not later than one year after the date of enactment thereof; and

Submission of a report to Congress by the Inspector General of the Department of Homeland Security that reviews the effectiveness of the implementation of title XXI of the Homeland Security Act of 2002, not later than October 1, 2010; and other provisions.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no Congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of the rule XXI.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 1, which grants Congress the power to provide for the common Defense of the United States.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short Title.

This section cites the short title of the bill as the “Chemical Facility Anti-Terrorism Act of 2008.”

Section 2. Findings and Purpose.

This section sets forth Congressional findings and states the purpose of the bill: to give permanent status to the Chemical Facility Anti-Terrorism Standards (CFATS) to protect the Nation’s chemical facilities from the significant risk of being terrorist targets. This section finds that the Secretary of Homeland Security currently has authority to regulate chemical facilities under the CFATS regulations issued pursuant to section 550 of the Department of Homeland Security Appropriations Act of 2007 (P.L. 109-295). Further, this section finds that the CFATS regulations are largely consistent with Congressional intent regarding chemical facility security but will sunset in October 2009. Finally, this section declares that the purpose of this measure is to codify the CFATS regulations and provide further Congressional guidance for implementation in the future.

Section 3. Sense of Congress.

This section expresses the sense of Congress that the Secretary of Homeland Security should use, as appropriate, the rules, regulations, and tools developed for the CFATS regulations established pursuant to section 550 of P.L. 109-295 to develop and administer all aspects of the new regulations. Among the tools that should be utilized, as appropriate, are Appendix A and the “Top Screen” tool. This section also notes that the Secretary should take a holistic ap-

proach to secure hazardous chemicals and utilize existing authority to secure the supply chain of chemicals.

Section 4. Extension, Modification, and Recodification of the Authority of the Secretary of Homeland Security to Regulate Security Practices at Chemical Facilities.

This section amends the Homeland Security Act of 2002 by adding a new “Title XXI-Regulation of Security Practices at Chemical Facilities.”

Section 2101. Definitions.

This section defines terms such as “chemical facility,” “chemical facility performance standard,” “chemical facility terrorist incident,” “employee representative,” “covered individual,” “covered chemical facility,” “environment,” “substance of concern,” and “method to reduce the consequences of a terrorist attack,” among others.

Section 2102. Risk-Based Designation and Ranking of Chemical Facilities.

This section requires the Secretary of Homeland Security to designate a chemical substance as a “substance of concern” and determine the regulated “threshold” quantities of these substances. In designating a chemical, the Secretary shall consider the potential for death, injury, and serious adverse effects to human health, the environment, critical infrastructure, National security, the National economy, and public welfare from a terrorist-related release. The Secretary may use the Appendix A list utilized under the CFATS regulations established pursuant P.L. 109-295 to fulfill this requirement.

This section also requires the Secretary to maintain a list of “covered chemical facilities” that present a certain level of security risk, based on the potential threat that the facility will be a target of terrorism; the potential extent of death, injury, or serious adverse effects to human health, the environment, critical infrastructure, National security, the National economy, and public welfare from a terrorist incident; and the proximity of the facility to population centers. The Secretary may require additional information to determine whether a facility qualifies as a covered chemical facility and may use the “Top Screen” process under the current CFATS regulations to fulfill this requirement.

Under this section, the Secretary is required to assign each covered chemical facility to one of at least four risk-based tiers with at least one tier being a high-risk tier. This section requires the Secretary to review the list periodically and update it as appropriate. The Secretary is required to notify the facilities of their designation or any modification of their designation within 60 days of the determination.

Section 2103. Security Vulnerability Assessments and Site Security Plans.

This section requires the Secretary of Homeland Security to establish standards, protocols, and procedures that mandate security vulnerability assessments and site security plans for covered chemical facilities. The requirements for vulnerability assessments and

site security plans must be risk-based, performance-based, and take into consideration cost and technical feasibility; quantities of a substance of concern stored, used, or handled; and the potential for death, injury, or serious adverse effects to human health, the environment, critical infrastructure, National security, the National economy, or public welfare from a terrorist-related release. Upon request of a covered chemical facility, the Secretary is required to provide technical assistance and guidance to a covered chemical facility that is preparing a security vulnerability assessment or site security plan.

This section requires all security vulnerability assessments and site security plans to detail the role of employees in deterring or responding to a chemical facility terrorist incident, as appropriate. Under this section, owners or operators of covered chemical facilities must provide a minimum of eight hours of training for employees, including a discussion of substances of concern; the prevention, preparedness, and response plan of the facility; identification of opportunities to use methods to reduce the consequences of a terrorist attack; and practice emergency response procedures.

This provision also requires the Secretary to provide a covered chemical facility with information to complete the vulnerability assessment including: potential consequences, criticality, proximity to other critical infrastructure, and best practices. It requires the facility to include appropriate employees, supervisors, and union representatives in the development of the security vulnerability assessment and site security plan.

This section requires the Secretary to establish risk-based chemical security performance requirements with separate and increasingly stringent requirements for each tier. Under this provision, the Secretary is required to permit facilities to select a combination of security measures in order to meet the requirements, and allow two or more co-located facilities to develop and implement coordinated security vulnerability assessments and site security plans.

Moreover, under this section, the Secretary may accept, in whole or in part, an alternate security program that a facility submits to the Secretary as fulfilling some or all of the regulatory requirements to complete a security vulnerability assessment and site security plan. The types of alternate security programs that are envisioned include vulnerability assessments, security plans or other documents developed to comply with other Federal laws such as the Safe Drinking Water Act (42 U.S.C. 300i-2), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Maritime Transportation Safety Act (chapter 701 of title 46, United States Code), State and local laws, and voluntary industry practices such as the American Chemistry Council's Responsible Care Code. The Committee encourages the Department of Homeland Security to allow process safety reviews to be submitted for review for the assessment required under section 2110 of this legislation. The Committee intends for the Secretary to review and approve or disapprove all submissions of alternate security program information on an individual, facility-by-facility basis.

This section requires facilities already subject to the Safe Drinking Water Act, the Federal Water Pollution Control Act, and the Maritime Transportation Safety Act to provide the documents submitted to comply with those existing authorities to the Secretary

for review. Under this process, the Secretary determines if the actions under those existing authorities fulfill the requirements of this legislation, and whether further action by the facility is needed. The Secretary shall consult with appropriate authorities, to ensure the requirements of this legislation and existing authorities are non-duplicative and non-contradictory. The Committee believes that the Secretary, by undertaking this analysis, will ensure that actions taken by covered chemical facilities to comply with other Federal requirements are leveraged.

This section requires the Secretary to coordinate with the Attorney General with regard to facilities that import, manufacture, distribute, or store explosive materials and are required to be licensed under 18 U.S.C. 40.

With respect to a high-risk tier facility, this section requires such a facility to conduct a security vulnerability assessment and to prepare and implement a site security plan that addresses the results of that facility's security vulnerability assessment. A security vulnerability assessment includes consideration of, among other things, the identification of any hazard that could result from a terrorist incident; any vulnerabilities to: physical security, computers, communication networks or systems, or automated systems, alarms, cameras, or protection systems, utilities or other infrastructure, and the structural integrity of storage, handling, or other equipment; and consideration of threat information.

Further, this provision requires a high-risk tier facility to develop and implement a site security plan that includes: security measures that address the vulnerabilities identified in the assessment and meet the risk-based security performance standards; a plan and schedule for drills and exercises that include, as appropriate, first responders, local law enforcement, supervisory and non-supervisory employees, and union representatives; equipment, plans, and procedures for responding to a terrorist incident including site evacuation, release mitigation, and containment plans; coordination efforts with State, local, and tribal law enforcement, first responders, and Federal officials; information on the security officer who will serve as the point of contact for incident management at the facility; a description of enhanced security measures to be used at times of heightened terrorist threat; an analysis of methods to reduce the consequences of a terrorist attack; and as well as any other provisions required by the Secretary.

This section requires the Secretary to conduct Red-Team exercises at each high-risk tier facility at least once in a six year period.

This section also requires the Secretary to provide timely threat-related information to the maximum extent practicable to high-risk tier chemical facilities. All covered chemical facilities are required to provide timely reports of any intentional, attempted, or accidental penetration of the facilities physical or cybersecurity.

The Committee intends that a covered chemical facility use, as the basis for an assessment under this section, the information on a worst-case chemical facility terrorist incident provided by the Secretary to that facility. The Committee also intends that guidance provided by the Secretary under this section shall be in convenient and user-friendly format, including methodologies and computer software that assist covered chemical facilities in evaluating

options to meet security performance standards. The Committee does not intend for any provision of this section to relieve any covered chemical facility of the responsibility to comply with each requirement of this title.

Section 2104. Record Keeping; Site Inspections.

This section requires that a current copy of the security vulnerability assessment and site security plan be maintained at each facility. Moreover, under this section, the Secretary of Homeland Security shall conduct security verifications and inspections and the Secretary or his designee shall have a right of entry to each facility at reasonable times to conduct verifications or inspections or both. In addition, the Secretary may, by regulation, authorize third-party entities that are trained and certified by the Secretary to conduct verifications and inspections to evaluate compliance with regulations, security standards, and requirements under this title.

This provision also requires the Secretary to consult with owners, operators, supervisory and non-supervisory employees, as well as union representatives, as appropriate, during the verification and inspections process. Where appropriate, the Secretary shall provide an opportunity to such individuals to be present during an inspection or verification.

It also requires that employee representatives receive copies of the vulnerability assessment and site security plan, and requires that such information be handled in accordance with the protection of information section.

To carry out this title, the Secretary may require specific documentation to be furnished in order to conduct a verification or inspection. Failures to maintain, produce, or allow access to records or to the property shall result in an order requiring compliance.

Section 2105. Enforcement.

This section requires the Secretary of Homeland Security to promulgate regulations that set specific deadlines for submitting security vulnerability assessments and site security plans, which may differ according to risk-based tier. Under this provision, such regulations shall set forth the specific deadlines for notifying the Secretary if there is any change in the use of more than the threshold amount of a substance of concern or any significant change in a security vulnerability assessment or site security plan previously submitted. In addition, the regulations shall require facilities to periodically review the adequacy of the facility's security vulnerability assessment or site security plan on a timeline set by the Secretary.

This section also requires the Secretary to review and approve security vulnerability assessments or site security plans no later than 180 days from the date of receipt. Under this provision, the Secretary may reject a security vulnerability assessment or site security plan if it does not comply with the requirements under section 2103 of this legislation or if the site security plan does not sufficiently address any vulnerabilities identified in the vulnerability assessment or through associated oversight actions, such as Red Team exercise, that are set forth in section 2103 or section 2104 of this legislation. Further, in the event of the Secretary's disapproval, this measure requires such disapproval to be communicated in writing to the facility and to clearly explain the defi-

ciencies in the submission; provide guidance in addressing the deficiencies; and require the facility to revise the submission to address the deficiencies by a specified date. If the revised vulnerability assessment, site security plan, or implementation plan is not submitted within the specified period, the Secretary shall issue an order for compliance requiring the deficiencies to be corrected by a specified date.

In the case of a high-risk tier facility, the Secretary shall, at the request of the facility, consult with that facility to identify appropriate steps to address the deficiencies. If an order for compliance is issued by the Secretary to a high-risk tier facility and that facility still does not comply, the Secretary may issue an order for that facility to cease operations until the facility is determined to be in compliance. In the case of a drinking water or wastewater facility that is in non-compliance, the Secretary may only issue an order to cease operations if the continued operation of the facility represents a clear and present danger to homeland security.

Finally, this section requires the Secretary to establish a reporting process through which any person can notify the Department about problems, deficiencies, or vulnerabilities at a chemical facility. The reporting process shall include provisions to keep the identity of any such person confidential, ensure acknowledgement of receipt and review of such information, and ensure that appropriate steps are undertaken to address any identified problem, deficiency, or vulnerability. Under this provision, no employee may be discharged or otherwise discriminated against because the employee: reports such problems to his employer, the Secretary or the facility operator; refuses to engage in illegal practices; testifies on such problems before Congress or in a Federal or State proceeding; commenced a Federal or State proceeding or caused a Federal or State proceeding to be commenced; or assisted or participated in such proceeding. Any employee covered under this section who alleges discrimination in violation of this section may bring an action under 49 U.S.C. 20109. The Committee strongly believes that those “whistleblowers” who bring security concerns to the attention of the Secretary or the facility owner or operator are this Nation’s security “eyes and ears” at these facilities. Facility owners and operators should listen to and appreciate whistleblowers for their service, not retaliate against or punish them for coming forward.

Section 2106. Penalties.

This section allows the Secretary of Homeland Security to bring an action in a U.S. district court against any facility that violates or fails to comply with any order or site security plan under this legislation. The relief available to the Secretary includes an injunctive relief order and civil penalties of not more than \$50,000 for each day a violation or failure to comply continues.

Any officer or employee of a Federal, State, local or tribal agency that knowingly discloses any record containing information about a facility’s vulnerability assessment or site security plan or any other information protected under section 2108 (f) shall be imprisoned for not more than a year, fined under chapter 227 of title 18, United States Code, or receive both penalties.

Section 2107. Federal Preemption.

This section affirms the right of any State or local authority to adopt or enforce any statute, regulation, requirement, or standard of performance for chemical facility security that is more stringent than this legislation. However, if any such statute, regulation, requirement, or standard of performance directly conflicts with Federal regulations established under this measure, the Federal statute preempts the State or local measure. This provision also clarifies that nothing in this measure shall preclude a State or local authority from adopting or enforcing environmental protection, health, or safety laws or regulations.

The Committee intends for this section to address instances of “conflict preemption,” and does not invoke the doctrine of “field preemption.” As the Department of Homeland Security has noted in the Chemical Facility Anti-Terrorism Standards interim rule (and confirmed in the final rule), “conflict preemption” is only meant to indicate that the provision “is not to be conflicted by, interfered with, hindered by, or frustrated by State measures, under long-standing legal principles” (DHS 2006-0073, RIN 1601-AA41, 6 C.F.R. Part 27).

The Committee notes that under the current CFATS regulations, no current State law or regulation regarding chemical facility security has been preempted, and the Committee intends that the CFATS regulations required under this legislation follow that precedent.

Section 2108. Protection of Information.

This section provides for a general prohibition against the disclosure of “protected information” under the Freedom of Information Act (5 U.S.C. 552) or other State or local sunshine laws. This provision requires the Secretary of Homeland Security to prescribe regulations or orders to prohibit unauthorized disclosure of protected information. Such regulations should allow information sharing, on a confidential basis, with Federal, State, local, and tribal law enforcement as well as with first responders and appropriate chemical facility personnel, as necessary; allow confidential use in administrative or judicial proceedings; limit access to protected information to persons designated by the Secretary; and ensure, to the maximum extent practical, that protected information is maintained in a secure location and access to such information be limited.

This section does not affect any obligation the facility may have under other Federal, State, or local laws to submit such information. This section also does not prohibit the sharing of information with Congress and does not affect any authority or obligation of any Federal agency to disclose a record or information that the Federal agency obtains from the facility through enforcement of a different law or regulation.

For the purposes of this title, protected information includes: criteria and data used by the Secretary to assign chemical facilities to risk-based tiers; the submitted security vulnerability assessments and site security plans; information concerning the security performance requirements; any other information generated or collected by a Federal, State, local or tribal government agency, by a chemical facility that describes any vulnerability of a facility to an

act of terrorism or describes the assignment of a facility to a risk-based tier or describes a security measure of the facility; and any other information that the disclosure of which the Secretary determines would be detrimental to the security of a chemical facility.

Section 2109. Certification of Third-Party Entities.

This section permits the Secretary of Homeland Security to certify third-party entities to carry out certain sections of this title including the review of information submitted to the Secretary regarding a facility's use and storage of substances of concern, security vulnerability assessments, site security plans, alternate security programs, site inspections, and provision of technical assistance. The Secretary is required to establish standards to ensure that such third-party entities have knowledge of physical infrastructure protection, cybersecurity, chemical facility security, hazard analysis, engineering, and other related expertise that the Secretary deems as necessary.

This provision also requires the Secretary, before selecting a third-party entity to carry out certain sections of this title, to conduct a 90-day independent review to determine whether the entity is in compliance with minimum standard operating procedures, including safety and hazard standards as set forth by the Secretary, and to determine whether the entity has any potential conflicts or business engagements that could compromise the entity's ability to execute its responsibilities as a third-party entity. Under this section, if the Secretary is satisfied, at the conclusion of the independent review, with the entity's ability to perform, then the Secretary shall issue a certificate of conformance with operating procedures and requirements and the demonstrated ability to perform validations. Such qualified third-party entities will receive limited litigation and risk management protection under the SAFETY Act (6 U.S.C. 441). The Secretary is required to regularly monitor and inspect the operations of third-party entities to ensure that minimum standard operating procedures are met.

In addition, every third-party entity that is awarded a contract must plan and implement the award of subcontracts to small business concerns, including economically disadvantaged small businesses, those owned by service-disabled veterans, HUBZone small businesses, Small Business Act 8(a) businesses, and historically black colleges and universities, Hispanic-serving institutions, tribal colleges and universities, and other minority-serving institutions. The provision also requires the Secretary, to the maximum extent practicable, to seek to facilitate the award of third-party entity contracts to groups of small businesses or "alliances."

This section also requires an annual report to Congress outlining the extent to which small business concerns participate in third-party entity contracts used to carry out the requirements of this legislation.

By including these provisions, the Committee intends to ensure that under-represented businesses are given a fair chance to contribute to the security of the chemical sector.

Section 2110. Methods to Reduce the Consequences of a Terrorist Attack.

This section requires that the site security plan of any covered chemical facility include an assessment of methods to reduce the consequences of a terrorist attack on the facility. Such methods may include substitution of chemicals, changes in processes, storage or use of less of a chemical of concern on site, changes to safer practices, reducing consequences of equipment failure or human error, improvements in inventory control, as well as reduction or elimination of storage, transportation, handling, disposal, or discharge of substances of concern. As a part of this assessment, the facility shall include information on the degree to which each method, if applied, will reduce the consequences of a terrorist attack; the technical viability associated with each method to reduce the consequences of a terrorist attack; and the costs and savings associated with each method to reduce the consequences of a terrorist attack.

Under this provision, high-risk tier chemical facilities are required to implement a method or methods to reduce the consequences of a terrorist attack if the Secretary of Homeland Security determines that such a method or methods: would significantly reduce the risk of death, injury, or serious adverse effects to human health from a terrorist release so long as the action does not shift risk and result in an increase in interim storage of a substance of concern outside the facility or directly result in another facility moving into a high-risk tier; can feasibly be incorporated into the facility's operations; and would not significantly and demonstrably impair the ability of the facility to continue to operate in the United States. Where a high-risk tier facility believes it is unable to act in accordance with the Secretary's determination that it must adopt a method or methods to reduce the consequences of a terrorist attack, such facility is required to provide a written explanation to the Secretary within 60 days of receipt of the Secretary's determination. The Secretary, in turn, shall consult with the facility and issue a final determination as to whether implementation is required. If implementation is required, the facility shall begin implementing the changes within 180 days of the Secretary's determination.

This section also requires the Secretary to provide information on each method to reduce the consequences of a terrorist attack to covered chemical facilities and provides that such information may be gathered by the Secretary from information provided by facilities, academic institutions, National Laboratories, private sector experts, other safety and security experts, and any other method the Secretary deems appropriate. Information that is made available to the public shall not identify any specific facility and must comply with the protection of information requirements of section 2108 of this legislation.

This section authorizes the Secretary to make funds available to help defray the cost to facilities of implementing methods to reduce consequences of a terrorist attack either on a voluntary basis or pursuant to a determination by the Secretary. It also requires the Secretary to give special consideration to those facilities required by the Secretary to implement methods to reduce the consequences of a terrorist attack as well as publicly-owned water and waste-

water facilities. Under this provision, the Secretary is prohibited from requiring a publicly-owned facility to implement methods to reduce the consequences of a terrorist attack unless that facility receives funding to help defray the cost of implementation.

The Committee recognizes that the surest way to protect a facility is for the facility to not become a target in the first place. As such, implementing methods to reduce the consequences of a terrorist attack should be a top priority in securing our Nation's chemical sector. However, the Committee recognizes that chemical facilities should have autonomy in their operations and expects the Secretary to carefully consider any decision to require implementation of such methods.

The Committee intends that information on alternative approaches other than protected or proprietary information be available under this section to chemical facility owners and operators; academic institutions; officials from Federal, State, local, and tribal governments; training providers and partners in section 8 of this measure; the National Chemical Security Center of Excellence in section 2115 of this measure; National Laboratories; facility employees; employee representatives and organizations; owners and developers of alternative technologies; and other public and private sector experts for the purpose of assessing or implementing alternative approaches.

The Committee observes that, in implementing the current Chemical Facility Anti-Terrorism Standards (CFATS) Interim Final Rule, the Department has been appropriately sensitive to the concerns of the agricultural sector regarding chemical security. The agricultural sector has been understood to include farms and farmers, agricultural retailers, rural propane distributors and fertilizer manufacturers, and the Committee supports this understanding. Furthermore, the Committee supports the Department's decision to grant an extension for the "Top-Screen" information for the agricultural sector.

Similarly, the Committee intends that the Department give particular attention to the agricultural sector and take into account both the proximity of such facilities to major population centers and their vital role in our Nation's economy as they administer chemical security regulations. The Committee believes that, in general terms, such facilities represent a relatively low security risk, as they use and store chemicals in agricultural settings, such as farms, feed stores, and similar facilities. It is not the intention of the Committee to promote or discourage the use of any particular chemical in agriculture through the provisions in this section.

The Committee does not intend for the Department to create a blanket mandate for the use of a government-selected "safest" technology or process, but to assess the security needs for each facility on a case-by-case basis. Additionally, the Committee expects the Department to carefully consider potential adverse affects of requiring implementation of specific methods to reduce the consequences of a terrorist attack. For example, placing limits on the amount of explosive fuels that can be stored at one facility could result in an increase of risk in other areas and less secure activities such as use of smaller but more numerous holding tanks, or more frequent coupling and decoupling of fuel trucks and fuel tanks.

Section 2111. Applicability.

This section clarifies that this legislation shall not apply to any facility owned and operated by the Departments of Defense, Justice, or Energy, or any facility that is owned or operated by a licensee or certificate holder of the Nuclear Regulatory Commission. Moreover, this legislation shall not apply to the transportation in commerce (including incidental storage) of a substance of concern which is regulated as a hazardous material under 49 U.S.C. 51.

Section 2112. Savings Clause.

This section specifies that nothing in this measure affects any existing obligation or liability under any other Federal law including section 112 of the Clean Air Act (42 U.S.C. 7412), the Federal Water Pollution Control Act, the Resource Conservation and Recovery Act, the National Environmental Policy Act of 1969, the Occupational Safety and Health Act, the National Labor Relations Act, the Emergency Planning and Community Right to Know Act, the Safe Drinking Water Act, the Maritime Transportation Security Act, and the Comprehensive Environmental Response, Compensation, and Liability Act.

The Committee intends for this measure to increase the security of our Nation's chemical facilities, while recognizing that other laws regarding public and environmental health and safety must not be compromised.

Section 2113. Office of Chemical Facility Security.

This section establishes within the Department of Homeland Security an Office of Chemical Facility Security that is headed by a Director. Under the provision, the professional qualifications for the Director, a Senior Executive Service career position, include a demonstrated knowledge of physical infrastructure protection, cybersecurity, chemical facility security, hazard analysis, chemical process engineering, chemical process safety reviews, and other such factors that the Secretary determines to be necessary. In conducting the selection process for the Director, the Secretary shall make a reasonable effort to select an individual from among a group of candidates that is diverse with respect to race, ethnicity, age, gender, and disability.

Section 2114. Security Background Checks of Covered Individuals at Certain Chemical Facilities.

This section requires the Secretary of Homeland Security to issue regulations requiring covered chemical facilities assigned to a high-risk tier to subject covered individuals who have access to restricted areas or critical assets to security background checks based on risk-based guidance. Under this provision, such regulations shall address the appropriate scope, process, necessary biographical information and other data to be collected, as well as redress procedures for security background checks performed on such covered individuals. This provision directs that, pursuant to the final regulation or any future rule, regulation, directive, or guidance, a facility shall not make an adverse employment decision as a result of a security background check unless the individual in question has been convicted of, found not guilty by reason of insanity, is under want, warrant, or indictment, or has been incarcerated within the past 5

years for a permanent or interim disqualifying crime under 49 C.F.R. 1572, is determined to be a known terrorist or have terrorist ties, or is determined not to be legally authorized to work in the United States.

This section also mandates that an adequate redress process for individuals subjected to an adverse employment decision because of a background check must be in place for a chemical facility to be in compliance with this legislation. Moreover, this provision authorizes the Secretary to order an appropriate remedy, including reinstatement of the covered individual, where a covered chemical facility wrongfully made an adverse employment decision; ensures that any such covered individual has access to any public-record event that provides the basis for the adverse employment decision; and ensures that the covered individual receives full wages and benefits until all appeals and waiver procedures are exhausted. This section also prohibits a chemical facility from misrepresenting to an employee or labor arbiter the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the Secretary related to security background check requirements when conducting a security background check.

This provision directs that any information obtained by the Secretary or a covered chemical facility shall not be made public, may not be accessed by other employees not directly involved with collecting the information or conducting or evaluating security background checks, shall be maintained confidentially by the facility, may be used only to make employment determinations under this provision, and may be shared by the Secretary with other Federal law enforcement agencies.

In addition, this section clarifies that nothing contained therein shall be construed to abridge any right or responsibility of a covered individual or covered chemical facility under any other Federal, State, local, or tribal law or collective bargaining agreement. Similarly, this section shall not be construed to preempt any other Federal, State, local, or tribal law that requires criminal history background checks, checks on authorization of an individual to work in the United States, or other background checks of covered individuals.

This provision defines a security background check as a review provided at no cost to the covered individual for the purpose of identifying individuals who may pose a threat to chemical facility security, to National security, or of terrorism. Further, this section defines the following as sources for the review: relevant databases to validate identity, check criminal history, check legal immigration status, identify terrorists or those with terrorist ties, and other relevant information as determined by the Secretary. Checks conducted to identify terrorists or individuals with known terrorist ties must take into consideration all relevant databases, including the consolidated terrorist watch list and the no-fly list.

Section 2115. National Chemical Security Center of Excellence.

This section establishes a National Chemical Security Center of Excellence whose mission is to conduct research and education and to develop technology to lower the overall risk of a terrorist chemical attack, including technologies or practices to decrease threats, vulnerabilities, and consequences in order to ensure the security of

chemical facilities. It specifies that at least three institutions of higher education must be members of the consortium, of which one must be a historically black college or university and one must be a Hispanic-serving institution. Under this provision, the National Chemical Center of Excellence, and any other chemical, biological, or agricultural Center of Excellence must be maintained as distinct entities with regard to organization and funding.

Section 2116. Authorization of Appropriations.

This section authorizes \$325 million to the Secretary of Homeland Security for FY 2010 to carry out the requirements of this legislation, of which \$100 million shall be made available to facilities for funding capital costs of implementing methods to reduce the consequences of a terrorist attack pursuant to section 2110(e) of this legislation; \$300 million for FY 2011 to carry out the requirements of this legislation, of which \$75 million shall be made available to facilities for funding capital costs of implementing methods to reduce the consequences of a terrorist attack pursuant to section 2110(e) of this legislation; and \$275 million for FY 2012 to carry out the requirements of this legislation, of which \$50 million shall be made available to facilities for funding capital costs of implementing methods to reduce the consequences of a terrorist attack pursuant to section 2110(e) of this measure.

This section also repeals section 550 of the Department of Homeland Security Appropriations Act of 2007 (P.L. 109-295), to be effective October 1, 2009. Moreover, this provision specifies that the Secretary may, as the Secretary deems appropriate, use any of the existing CFATS regulations to carry out the requirements of this measure. It also specifies that the Secretary may require chemical facilities to adhere to pre-existing timelines under such existing regulations, where a chemical facility is required to submit a security vulnerability assessment and site security plan under section 2103 of this measure. Additionally, this provision establishes deadlines for the Secretary to update guidance, recommendations, or suggested action items relating to performing a security background check of a covered individual and for high-risk chemical facilities to comply with the new vulnerability assessment and site security plan requirements.

Section 5. Annual Report to Congress.

This section requires an annual report to Congress not later than one year from the date of enactment of this legislation on progress in achieving compliance with this legislation, including an assessment of the effectiveness of the site security plans developed under this measure; lessons learned in implementation, including red-team exercises; and recommendations of the Secretary of Homeland Security to improve those areas, including the feasibility of programs to increase the number of economically disadvantaged businesses eligible to perform third-party entity responsibilities. This provision also directs that the report may not include information protected under section 2108 of this legislation.

The Committee intends that the assessment of programs, plans, and procedures should describe and enumerate the scope of the program using aggregate information, including but not limited to the number of facilities that are covered; number that are in com-

pliance; number that have implemented alternative approaches; number that are in each risk tier; number that have moved to a lower risk tier; and, for each risk tier, the number of facilities sorted by population at risk in and around each facility.

Section 6. Inspector General Report.

This section requires the Inspector General to submit a report to Congress on the effectiveness of the implementation of this measure, including the effectiveness of the site security plans required under this measure and any recommendations to improve the programs, plans, and procedures required under its provisions, the Secretary's dissemination of best practices under section 2103(a)(1)(A) of this measure, and the participating rates of economically disadvantaged businesses eligible to perform third-party entity responsibilities. Under this provision, the Inspector General's report must be submitted not later than October 1, 2010, and may include a classified annex if deemed necessary.

Section 7. Deadline for Regulations.

This section sets the effective date for full implementation of final rules as October 1, 2009. The Committee intends for all Federal Agencies to take into account all necessary regulatory processes and timelines to guarantee full implementation by this date.

Section 8. Chemical Facility Training Program.

This section amends title VIII of the Homeland Security Act of 2002 (6 U.S.C. 361) by adding a new section 802 that establishes a Chemical Facility Security Training Program to enhance collective response to terrorism and the capabilities of chemical facilities to prevent, prepare for, respond to, mitigate against, and recover from threatened or actual terrorist incidents. This provision also specifies that the Program provide training across multiple disciplines, including Federal, State, and local authorities; chemical plant owners, operators, and employees; and governmental and nongovernmental emergency response providers. It also directs that the training shall be consistent with the National Incident Management System, the National Response Framework, the National Infrastructure Protection Plan, and the National Preparedness Guidelines. In addition, under this section, the Secretary shall support the promulgation of national voluntary consensus standards for such training programs and shall work with government training programs, chemical facilities, academic institutions, industry and private organizations, employee organizations, and others to develop and deliver state-of-the-art training. This section also directs the Secretary to utilize, as appropriate, existing training provided by industry, public safety academies, Federal programs, employee organizations, State and private colleges and universities, and other chemical facilities

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

HOMELAND SECURITY ACT OF 2002

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) * * *

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

* * * * *

TITLE VIII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

Subtitle A—Coordination with Non-Federal Entities

* * * * *

Sec. 802. Chemical facility training program.

* * * * *

TITLE XXI—REGULATION OF SECURITY PRACTICES AT CHEMICAL FACILITIES

Sec. 2101. Definitions.

Sec. 2102. Risk-based designation and ranking of chemical facilities.

Sec. 2103. Security vulnerability assessments and site security plans.

Sec. 2104. Record keeping; site inspections.

Sec. 2105. Enforcement.

Sec. 2106. Penalties.

Sec. 2107. Federal preemption.

Sec. 2108. Protection of information.

Sec. 2109. Certification by third-party entities.

Sec. 2110. Methods to reduce the consequences of a terrorist attack.

Sec. 2111. Applicability.

Sec. 2112. Savings clause.

Sec. 2113. Office of Chemical Facility Security.

Sec. 2114. Security background checks of covered individuals at certain chemical facilities.

Sec. 2114. National chemical security center of excellence.

Sec. 2115. Authorization of appropriations.

* * * * *

TITLE VIII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

Subtitle A—Coordination with Non-Federal Entities

* * * * *

SEC. 802. CHEMICAL FACILITY TRAINING PROGRAM.

(a) *IN GENERAL.*—The Secretary shall establish a Chemical Facility Security Training Program (referred to in this section as the “Program”) for the purpose of enhancing the collective response to terrorism and the capabilities of chemical facilities to prevent, prepare for, respond to, mitigate against, and recover from threatened or actual chemical facility terrorist incidents.

(b) *REQUIREMENTS.*—The Program shall provide training that—

(1) reaches multiple disciplines, including Federal, State, local, and tribal government officials, chemical facility owners, operators, and employees, and governmental and nongovernmental emergency response providers;

(2) utilizes multiple training mediums and methods;

(3) addresses chemical facility security and site security plans, including—

(A) site security plans and procedures for differing threat levels;

(B) physical security, security equipment and systems, access control, and methods for preventing and countering theft;

(C) recognition and detection of weapons and devices;

(D) security incident procedures, including procedures for communicating with emergency response providers;

(E) evacuation procedures and use of appropriate personal protective equipment; and

(F) other requirements that the Secretary deems appropriate.

(4) is consistent with, and supports implementation of, the National Incident Management System, the National Response Framework, the National Infrastructure Protection Plan, the National Preparedness Guidelines, and other national initiatives;

(5) includes consideration of existing security and hazardous chemical training programs including Federal or industry programs; and

(6) is evaluated against clear and consistent performance measures.

(c) NATIONAL VOLUNTARY CONSENSUS STANDARDS.—The Secretary shall—

(1) support the promulgation, and regular updating as necessary and appropriate of national voluntary consensus standards for chemical facility security training ensuring that training is consistent with such standards; and

(2) ensure that the training provided under this section is consistent with such standards.

(d) TRAINING PARTNERS.—In developing and delivering training under the Program, the Secretary shall—

(1) work with government training programs, chemical facilities, academic institutions, industry and private organizations, employee organizations, and other relevant entities that provide specialized state-of-the-art training; and

(2) utilize, as appropriate, training provided by industry, public safety academies, Federal programs, employee organizations, State and private colleges and universities, and other chemical facilities.

* * * * *

TITLE XXI—REGULATION OF SECURITY PRACTICES AT CHEMICAL FACILITIES

SEC. 2101. DEFINITIONS.

In this title, the following definitions apply:

(1) *The term “chemical facility” means any facility—*

(A) at which a chemical is or may be used, stored, manufactured, processed or distributed; and

(B) for which the Secretary requires the owner or operator of the chemical facility to submit information pursuant to section 2102(b)(2).

(2) *The term “chemical facility security performance standard” means a risk-based standard established by the Secretary to ensure or enhance the security of a chemical facility against a chemical facility terrorist incident that is designed to address—*

(A) restricting the area perimeter;

(B) securing site assets;

(C) screening and controlling access to the facility and to restricted areas within the facility by screening or inspecting individuals and vehicles as they enter, including—

(i) measures to deter the unauthorized introduction of dangerous substances and devices that may facilitate a chemical facility terrorist incident or actions having serious negative consequences for the population surrounding the chemical facility; and

(ii) measures implementing a regularly updated identification system that checks the identification of chemical facility personnel and other persons seeking access to the chemical facility and that discourages abuse through established disciplinary measures;

(D) methods to deter, detect, and delay a chemical facility terrorist incident, creating sufficient time between detection of a chemical facility terrorist incident and the point at which the chemical facility terrorist incident becomes successful, including measures to—

(i) deter vehicles from penetrating the chemical facility perimeter, gaining unauthorized access to restricted areas, or otherwise presenting a hazard to potentially critical targets;

(ii) deter chemical facility terrorist incidents through visible, professional, well-maintained security measures and systems, including security personnel, detection systems, barriers and barricades, and hardened or reduced value targets;

(iii) detect chemical facility terrorist incidents at early stages through counter surveillance, frustration of opportunity to observe potential targets, surveillance and sensing systems, and barriers and barricades; and

(iv) delay a chemical facility terrorist incident for a sufficient period of time so as to allow appropriate response through on-site security response, barriers and barricades, hardened targets, and well-coordinated response planning;

(E) securing and monitoring the shipping, receipt, and storage of a substance of concern for the chemical facility;

(F) deterring theft or diversion of a substance of concern;

(G) deterring insider sabotage;

(H) deterring cyber sabotage, including by preventing unauthorized onsite or remote access to critical process controls, including supervisory control and data acquisition systems, distributed control systems, process control systems, industrial control systems, critical business systems, and other sensitive computerized systems;

(I) developing an emergency plan to respond to chemical facility terrorist incidents with the guidance of the Secretary that includes, as appropriate, an early warning system for local emergency response providers and the community surrounding the facility, and exercising such plan internally and with the assistance of local law enforcement officials and emergency response providers to enhance the collective response to terrorism;

(J) maintaining effective monitoring, communications, and warning systems, including—

(i) measures designed to ensure that security systems and equipment are in good working order and inspected, tested, calibrated, and otherwise maintained;

(ii) measures designed to regularly test security systems, note deficiencies, correct for detected deficiencies, and record results so that they are available for inspection by the Department; and

(iii) measures to allow the chemical facility to promptly identify and respond to security system and equipment failures or malfunctions;

(K) ensuring mandatory annual security training, exercises, and drills of chemical facility personnel;

(L) performing personnel surety for individuals with access to restricted areas or critical assets by conducting appropriate background checks and ensuring appropriate credentials for unescorted visitors and chemical facility personnel, including permanent and part-time personnel, temporary personnel, and contract personnel, including—

(i) measures designed to verify and validate identity;

(ii) measures designed to check criminal history;

(iii) measures designed to verify and validate legal authorization to work; and

(iv) measures designed to identify people with terrorist ties;

(M) escalating the level of protective measures for periods of elevated threat;

(N) specific threats, vulnerabilities, or risks identified by the Secretary for that chemical facility;

(O) reporting of significant security incidents to the Department and to appropriate local law enforcement officials;

(P) identifying, investigating, reporting, and maintaining records of significant security incidents and suspicious activities in or near the site;

- (Q) *establishing one or more officials and an organization responsible for security and for compliance with these standards;*
- (R) *maintaining appropriate records relating to the security of the facility;*
- (S) *assessing, as appropriate, or utilizing methods to reduce the consequences of a terrorist attack; or*
- (T) *any additional security performance standards the Secretary may specify.*
- (3) *The term “chemical facility terrorist incident” means an act or attempted act of terrorism committed at, near, or against a chemical facility, including—*
 - (A) *the release of a substance of concern from a chemical facility into the surrounding area as a consequence of an act of terrorism; or*
 - (B) *the obtaining of a substance of concern by any person for the purpose of using the substance at a location other than the chemical facility in furtherance of an act of terrorism; or*
 - (C) *the sabotage of a chemical facility or a substance of concern at a chemical facility in furtherance of an act of terrorism.*
- (4) *The term “employee representative” means a representative of the certified or recognized bargaining agent engaged in a collective bargaining relationship with a private or public owner or operator of a chemical facility.*
- (5) *The term “covered individual” means a permanent, temporary, full-time, or part-time employee of a covered chemical facility or an employee of an entity with which the covered chemical facility has entered into a contract who is performing responsibilities at the facility pursuant to the contract.*
- (6) *The term “covered chemical facility” means a chemical facility that the Secretary assigns to a risk-based tier under section 2102(c) that is required to submit a security vulnerability assessment and site security plan under section 2103.*
- (7) *The term “environment” has the meaning given the term in section 101 of the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601).*
- (8) *The term “owner or operator of a chemical facility” means any of the following:*
 - (A) *The person who owns a chemical facility.*
 - (B) *The person who leases such a facility.*
 - (C) *The person who operates such a facility.*
- (9) *The term “release” has the meaning given the term in section 101 of the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601).*
- (10) *The term “substance of concern” means a chemical substance in quantity and form that is designated by the Secretary under section 2102(a) as a chemical substance that poses a risk of being used in furtherance of a chemical facility terrorist incident.*
- (11) *The term “method to reduce the consequences of a terrorist attack” includes—*
 - (A) *input substitution;*
 - (B) *catalyst or carrier substitution;*

- (C) process redesign (including reuse or recycling of a substance of concern);
- (D) product reformulation;
- (E) procedure simplification;
- (F) technology modification;
- (G) use of less hazardous substances or benign substances;
- (H) use of smaller quantities of substances of concern;
- (I) reduction of hazardous pressures or temperatures;
- (J) reduction of the possibility and potential consequences of equipment failure and human error;
- (K) improvement of inventory control and chemical use efficiency; and
- (L) reduction or elimination of the storage, transportation, handling, disposal, and discharge of substances of concern.

SEC. 2102. RISK-BASED DESIGNATION AND RANKING OF CHEMICAL FACILITIES.

(a) **SUBSTANCES OF CONCERN.**—

(1) **DESIGNATION BY THE SECRETARY.**—The Secretary may designate any chemical substance as a substance of concern and establish and revise the threshold quantity for a substance of concern.

(2) **MATTERS FOR CONSIDERATION.**—In designating a chemical substance or establishing or adjusting the threshold quantity for a chemical substance under paragraph (1), the Secretary shall consider the potential extent of death, injury, and serious adverse effects to human health, the environment, critical infrastructure, national security, the national economy, and public welfare that would result from a chemical facility terrorist incident.

(b) **LIST OF COVERED CHEMICAL FACILITIES.**—

(1) **CRITERIA FOR LIST OF FACILITIES.**—The Secretary shall maintain a list of covered chemical facilities that the Secretary determines are of sufficient security risk for inclusion on the list based on the following criteria:

(A) The potential threat or likelihood that the chemical facility will be the target of a chemical facility terrorist incident.

(B) The potential extent and likelihood of death, injury, or serious adverse effects to human health, the environment, critical infrastructure, national security, the national economy, and public welfare that could result from a chemical facility terrorist incident.

(C) The proximity of the chemical facility to population centers.

(2) **SUBMISSION OF INFORMATION.**—The Secretary may require the submission of information with respect to the quantities of substances of concern that are used, stored, manufactured, processed, or distributed by any chemical facility to determine whether to designate a chemical facility as a covered chemical facility for purposes of this title.

(c) **ASSIGNMENT OF CHEMICAL FACILITIES TO RISK-BASED TIERS.**—

(1) *ASSIGNMENT.*—The Secretary shall assign each covered chemical facility to one of at least four risk-based tiers established by the Secretary.

(2) *PROVISION OF INFORMATION.*—The Secretary may request, and the owner or operator of a covered chemical facility shall provide, any additional information beyond any information required to be submitted under subsection (b)(2) that is needed for the Secretary to assign the chemical facility to the appropriate tier under paragraph (1).

(3) *HIGH-RISK CHEMICAL FACILITIES.*—At least one of the tiers established by the Secretary for the assignment of chemical facilities under this subsection shall be a tier designated for high-risk chemical facilities.

(4) *AUTHORITY TO REVIEW.*—The Secretary shall periodically review the criteria under subsection (b)(1) and may, at any time, determine whether a chemical facility is a covered chemical facility or is no longer a covered chemical facility or change the tier assignment under paragraph (1) of any covered chemical facility.

(5) *NOTIFICATION.*—Not later than 60 days after the date on which the Secretary determines that a chemical facility is a covered chemical facility or is no longer a covered chemical facility or changes the tier assignment under paragraph (1) of a covered chemical facility, the Secretary shall notify the owner or operator of that chemical facility of that determination or change together with the reason for the determination or change.

SEC. 2103. SECURITY VULNERABILITY ASSESSMENTS AND SITE SECURITY PLANS.

(a) *SECURITY VULNERABILITY ASSESSMENT AND SITE SECURITY PLAN REQUIRED FOR COVERED CHEMICAL FACILITIES.*—

(1) *REQUIREMENT FOR SECURITY VULNERABILITY ASSESSMENT AND SITE SECURITY PLAN.*—The Secretary shall—

(A) establish standards, protocols, and procedures for security vulnerability assessments and site security plans to be required for covered chemical facilities;

(B) provide to the owner or operator of each covered chemical facility—

(i) the number of individuals at risk of death, injury, or severe adverse effects to human health as a result of a worst case chemical facility terrorist incident at the covered chemical facility;

(ii) information related to the criticality of the covered chemical facility for purposes of assessing the degree to which the facility is critical to the economy or national security of the United States;

(iii) the proximity or interrelationship of the covered chemical facility to other critical infrastructure, including any utility or infrastructure (including transportation) upon which the chemical facility relies to operate safely and securely; and

(iv) recommended best practices for securing chemical facilities;

(C) require the owner or operator of each such covered chemical facility to—

(i) conduct an assessment of the vulnerability of the covered chemical facility to a chemical facility terrorist incident;

(ii) prepare and implement a site security plan for that covered chemical facility that addresses the security vulnerability assessment and the risk-based chemical security performance standards under subsection (c); and

(iii) include appropriate supervisory and non-supervisory employees of the covered chemical facility, and any employee representatives, as appropriate, in developing the security vulnerability assessment and site security plan required under this clause; and

(D) set deadlines for the completion of security vulnerability assessments and site security plans.

(2) CRITERIA.—The Secretary shall ensure that the requirements under paragraph (1)—

(A) are risk-based;

(B) are performance-based; and

(C) take into consideration—

(i) the cost and technical feasibility of compliance by a covered chemical facility with the requirements under this title;

(ii) the different quantities and forms of substances of concern stored, used, and handled at covered chemical facilities; and

(iii) the criteria under section 2102(a)(2).

(b) MINIMUM REQUIREMENTS FOR HIGH-RISK CHEMICAL FACILITIES.—

(1) REQUIREMENTS FOR SECURITY VULNERABILITY ASSESSMENTS.—In the case of a covered chemical facility assigned to a high-risk tier under section 2102(c)(3), the Secretary shall require that the security vulnerability assessment required under this section for that chemical facility include each of the following:

(A) The identification of any hazard that could result from a chemical facility terrorist incident at the facility.

(B) Any vulnerability of the chemical facility with respect to—

(i) physical security;

(ii) programmable electronic devices, computers, computer or communications networks, Supervisory Control and Data Acquisition systems, Process Control Systems, or other automated systems used by the chemical facility;

(iii) alarms, cameras, and other protection systems;

(iv) communication systems;

(v) insider threats; and

(vi) the structural integrity of equipment for storage, handling, and other purposes.

(C) Consideration of information relating to threats relevant to the chemical facility that is provided by the Secretary in accordance with paragraph (3).

(D) Such other information as the Secretary determines is appropriate.

(2) *REQUIREMENTS FOR SITE SECURITY PLANS.*—*In the case of a covered chemical facility assigned to a high-risk tier under section 2102(c)(3), the Secretary shall require that the site security plan required under this section for that chemical facility include each of the following:*

(A) *A description of security measures selected by the facility that—*

(i) address the vulnerabilities of the facility identified in the security vulnerability assessment; and

(ii) meet the risk-based chemical facility security performance standards established by the Secretary.

(B) *A plan and schedule for periodic drills and exercises to be conducted at the chemical facility the development and execution of which includes participation by appropriate supervisory and non-supervisory facility employees and any employee representatives, local law enforcement agencies, and emergency response providers.*

(C) *Equipment, plans, and procedures to be implemented or used by or at the chemical facility in the event of a chemical facility terrorist incident that affects the facility, including site evacuation, release mitigation, and containment plans.*

(D) *An identification of any steps taken to coordinate with State, local, and tribal law enforcement agencies, emergency response providers, the Department and other Federal agencies, and Federal officials on security measures and plans for the collective response to a chemical facility terrorist incident.*

(E) *A specification of the security officer who will be the point of contact for incident management purposes and for Federal, State, local, and tribal law enforcement and emergency response providers.*

(F) *A description of enhanced security measures to be used during periods of time when the Secretary determines that heightened terrorist threat conditions exist.*

(G) *An assessment and, as appropriate, a plan to implement methods to reduce the consequences of a terrorist attack.*

(3) *PROVISION OF THREAT-RELATED INFORMATION.*—

(A) *RESPONSIBILITIES OF THE SECRETARY.*—*The Secretary shall provide in a timely manner, to the maximum extent practicable under applicable authority and in the interests of national security, to an owner, operator, or security officer of a chemical facility assigned to the high-risk tier under section 2102(c)(3), or another appropriate person, threat information that is relevant to that chemical facility, including an assessment of the most likely method that could be used by terrorists to exploit any vulnerabilities of the chemical facility and the likelihood of the success of such method.*

(B) *RESPONSIBILITIES OF OWNER OR OPERATOR.*—*The Secretary shall require the owner or operator of a covered chemical facility to provide in a timely manner to the Secretary a full report on any intentional, attempted, or acci-*

dental penetration of the physical security or cyber security of the covered chemical facility.

(4) *RED TEAM EXERCISES.*—The Secretary shall conduct red team exercises at chemical facilities selected by the Secretary that have been assigned to a high-risk tier under section 2102(c)(3). The Secretary shall ensure that each such facility shall undergo a red team exercise during the six-year period that begins on the effective date of the regulations prescribed to carry out this title. The exercises required under this paragraph shall be—

(A) *conducted after informing the owner or operator and any employee representative of the selected chemical facility and receiving positive confirmation from such owner or operator and employee representative, if any;*

(B) *designed to identify at the selected chemical facility—*

(i) any vulnerabilities of the chemical facility;

(ii) possible methods of a chemical facility terrorist incident at that facility; and

(iii) any weaknesses in the security plan of the chemical facility; and

(C) *conducted so as not to compromise the security or safety of the chemical facility during the exercises.*

(5) *PROVISION OF TECHNICAL GUIDANCE.*—The Secretary shall provide, upon request, assistance and guidance to a covered chemical facility conducting a security vulnerability assessment or site security plan required under this section.

(c) *RISK-BASED CHEMICAL SECURITY PERFORMANCE STANDARDS.*—

(1) *IN GENERAL.*—The Secretary shall establish risk-based chemical security performance standards for the site security plans required to be prepared by covered chemical facilities. The standards shall—

(A) *require separate and increasingly stringent risk-based chemical security performance standards for site security plans as the level of risk associated with the tier increases; and*

(B) *permit each covered chemical facility submitting a site security plan to select a combination of security measures that satisfy the risk-based chemical security performance standards established by the Secretary under this subsection.*

(2) *CRITERIA.*—In establishing the risk-based chemical security performance standards under paragraph (1), the Secretary shall consider the criteria under subsection (a)(2).

(3) *GUIDANCE.*—The Secretary shall provide guidance to each covered chemical facility regarding the types of security performance measures that, if applied, could satisfy the requirements under this section, including measures using methods to reduce the consequences of a terrorist attack that, if applied, could result in the Secretary removing the facility from the list or assigning the facility to a lower risk tier.

(d) *CO-LOCATED CHEMICAL FACILITIES.*—The Secretary shall allow the owner or operator of two or more chemical facilities that are located geographically close to each other or otherwise co-located to develop and implement coordinated security vulnerability assess-

ments and site security plans, at the discretion of the owner or operator of the chemical facilities.

(e) **ALTERNATE SECURITY PROGRAMS SATISFYING REQUIREMENTS FOR SECURITY VULNERABILITY ASSESSMENT AND SITE SECURITY PLAN.**—

(1) **DETERMINATION BY THE SECRETARY.**—In response to a request by an owner or operator of a covered chemical facility, or at the discretion of the Secretary, the Secretary may accept an alternative security program that the Secretary determines meets all or part of the requirements of this section and that provides for an equivalent level of security to the level of security provided for by the requirements of this title.

(2) **USE OF ALTERNATE SECURITY PROGRAMS.**—

(A) **USE BY INDIVIDUAL CHEMICAL FACILITIES.**—Upon review and written determination by the Secretary under paragraph (1) that the alternate security program of a covered chemical facility subject to the requirements of this section satisfies some or all of the requirements of this section, the chemical facility may use that alternate security program.

(B) **USE BY CLASSES OF CHEMICAL FACILITIES.**—At the discretion of the Secretary, the Secretary may identify a class or category of covered chemical facilities subject to the requirements of this section that may use an alternate security program recognized under this section in order to comply with all or part of the requirements of this section.

(3) **PARTIAL RECOGNITION.**—If the Secretary finds that an alternate security program satisfies only part of the requirements of this section, the Secretary may allow a covered chemical facility subject to the requirements of this section to comply with that alternate security program for purposes of that requirement, but shall require the covered chemical facility to submit any additional information required to satisfy the requirements of this section not met by that alternate security program.

(4) **NOTIFICATION.**—If the Secretary does not approve an alternate security program for which a petition is submitted under paragraph (1), the Secretary shall provide to the person submitting a petition under paragraph (1) written notification that includes an explanation of the reasons why the approval was not made.

(5) **REVIEW REQUIRED.**—Nothing in this subsection shall relieve the Secretary of the obligation—

(A) to review a security vulnerability assessment and site security plan submitted by a covered chemical facility under this section; and

(B) to approve or disapprove each such assessment or plan on an individual basis.

(f) **OTHER AUTHORITIES.**—

(1) **OTHER PROVISIONS OF LAW.**—A covered chemical facility that is required to prepare a security vulnerability assessment or site security plan or to submit or develop other relevant documents under chapter 701 of title 46, United States Code, the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), or section 1433 of the Safe Drinking Water Act (42 U.S.C. 300i-2) shall submit such plan or documents to the Secretary. The

Secretary shall determine the extent to which actions taken by such a chemical facility pursuant to another provision of law fulfill the requirements of this section and may require such a chemical facility to complete any additional action required by this section. The Secretary shall work with the heads of the other Federal departments and agencies with authority with respect to such a covered chemical facility to ensure that requirements under other provisions of law and the requirements under this title are non-duplicative and non-contradictory.

(2) COORDINATION OF STORAGE LICENSING OR PERMITTING REQUIREMENT.—In the case of any storage required to be licensed or permitted under chapter 40 of title 18, United States Code, the Secretary shall prescribe the rules and regulations for the implementation of this section with the concurrence of the Attorney General and avoid unnecessary duplication of regulatory requirements.

(g) ROLE OF EMPLOYEES.—

(1) DESCRIPTION OF ROLE REQUIRED.—As appropriate, security vulnerability assessments or site security plans required under this section should describe the roles or responsibilities that chemical facility employees are expected to perform to deter or respond to a chemical facility terrorist incident.

(2) TRAINING FOR EMPLOYEES.—The owner or operator of a covered facility required to submit a site security plan under this section shall annually provide each employee of the facility with a minimum of 8 hours of training. Such training shall include—

(A) an identification and discussion of substances of concern that pose a risk to the workforce, emergency response providers, and the community;

(B) a discussion of the prevention, preparedness, and response plan for the facility, including off-site consequence impacts;

(C) an identification of opportunities to reduce or eliminate the vulnerability of the facility to a terrorist incident through the use of methods to reduce the consequences of a terrorist attack; and

(D) a discussion and practice of appropriate emergency response procedures.

SEC. 2104. RECORD KEEPING; SITE INSPECTIONS.

(a) RECORD KEEPING.—The Secretary shall require each covered chemical facility required to submit a security vulnerability assessment or site security plan under section 2103 to maintain a current copy of the assessment and the plan at the chemical facility.

(b) RIGHT OF ENTRY.—For purposes of carrying out this title, the Secretary (or a designee of the Secretary) shall have, at a reasonable time and on presentation of credentials, a right of entry to, on, or through any property of a covered chemical facility or any property on which any record required to be maintained under this section is located.

(c) INSPECTIONS AND VERIFICATIONS.—

(1) IN GENERAL.—The Secretary shall, at such time and place as the Secretary determines to be reasonable and appropriate, conduct or require the conduct of chemical facility security inspections and verifications and may, by regulation, authorize

third-party inspections and verifications by persons trained and certified by the Secretary for that purpose.

(2) *REQUIREMENTS.—To ensure and evaluate compliance with this title, including any regulations or requirements adopted by the Secretary in furtherance of the purposes of this title, in conducting or requiring an inspection or verification under paragraph (1), the Secretary shall—*

(A) consult with owners, operators, and supervisory and non-supervisory employees of the covered chemical facility, and any employee representatives, as appropriate; and

(B) provide an opportunity to such owners, operators, employees, and employee representatives to be present during the inspection or verification for the purpose of providing assistance when and where it is appropriate.

(d) REQUESTS FOR RECORDS.—

(1) IN GENERAL.—In carrying out this title, the Secretary (or a designee of the Secretary) may require the submission of or, on presentation of credentials, may at reasonable times obtain access to and copy any documentation necessary for—

(A) reviewing or analyzing a security vulnerability assessment or site security plan submitted under section 2103; or

(B) implementing such a site security plan.

(2) PROPER HANDLING OF RECORDS.—In accessing or copying any documentation under paragraph (1), the Secretary (or a designee of the Secretary) shall ensure that the documentation is handled and secured appropriately.

(e) PROVISION OF RECORDS TO EMPLOYEE REPRESENTATIVES.—If a covered chemical facility required to submit a security vulnerability assessment or site security plan submitted under section 2103 has an employee representative, the owner or operator of the facility shall provide the employee representative with a copy of any security vulnerability assessment or site security plan submitted. The employee representative shall ensure that any such assessment or plan provided to the representative is handled and secured appropriately in accordance with section 2108.

(f) COMPLIANCE.—If the Secretary determines that an owner or operator of a covered chemical facility required to submit a security vulnerability assessment or site security plan under section 2103 fails to maintain, produce, or allow access to records or to the property of the covered chemical facility as required by this section, the Secretary shall issue an order requiring compliance with this section.

SEC. 2105. ENFORCEMENT.

(a) SUBMISSION OF INFORMATION.—

(1) INITIAL SUBMISSION.—The Secretary shall establish specific deadlines for the submission to the Secretary of the security vulnerability assessments and site security plans required under this title. The Secretary may establish different submission requirements for the different tiers of chemical facilities under section 2102(c).

(2) MAJOR CHANGES REQUIREMENT.—The Secretary shall establish specific deadlines and requirements for the submission by a covered chemical facility of information describing—

(A) any change in the use by the covered chemical facility of more than a threshold amount of any substance of concern that could affect the requirements of the chemical facility under this title; and

(B) any significant change in a security vulnerability assessment or site security plan submitted by the covered chemical facility.

(3) *PERIODIC REVIEW BY CHEMICAL FACILITY REQUIRED.*—The Secretary shall require the owner or operator of a covered chemical facility required to submit a security vulnerability assessment or site security plan under this section to periodically submit to the Secretary a review of the adequacy of the security vulnerability assessment or site security plan that includes a description of any changes made to the security vulnerability assessment or site security plan.

(b) *REVIEW OF SITE SECURITY PLAN.*—

(1) *DEADLINE FOR REVIEW.*—Not later than 180 days after the date on which the Secretary receives a security vulnerability assessment or site security plan under this title, the Secretary shall review and approve or disapprove such assessment or plan.

(2) *DISAPPROVAL.*—The Secretary shall disapprove a security vulnerability assessment or site security plan if the Secretary determines that—

(A) the security vulnerability assessment or site security plan does not comply with the requirements under section 2103; or

(B) in the case of a site security plan, the plan or the implementation of the plan is insufficient to address any vulnerabilities identified in a security vulnerability assessment of the covered chemical facility or associated oversight actions taken under section 2103 or section 2104, including a red team exercise.

(3) *PROVISION OF NOTIFICATION OF DISAPPROVAL.*—If the Secretary disapproves the security vulnerability assessment or site security plan submitted by a covered chemical facility under this title or the implementation of a site security plan by such a chemical facility, the Secretary shall—

(A) provide the owner or operator of the covered chemical facility a written notification of the disapproval, that—

(i) includes a clear explanation of deficiencies in the assessment, plan, or implementation of the plan; and

(ii) requires the owner or operator of the covered chemical facility to revise the assessment or plan to address any deficiencies and, by such date as the Secretary determines is appropriate, to submit to the Secretary the revised assessment or plan;

(B) provide guidance to assist the owner or operator of the covered chemical facility in addressing such deficiency;

(C) in the case of a covered chemical facility for which the owner or operator of the facility does not address such deficiencies by such date as the Secretary determines to be appropriate, issue an order requiring the owner or operator to correct specified deficiencies by a specified date; and

(D) in the case of a covered chemical facility assigned to a high-risk tier under section 2102(c)(3), upon the request of the owner or operator of the facility, consult with the owner or operator to identify appropriate steps to be taken by the owner or operator to address the deficiencies identified by the Secretary.

(4) ORDER TO CEASE OPERATIONS.—If the Secretary determines that the owner or operator of a chemical facility assigned to a high-risk tier under section 2102(c)(3) continues to be in noncompliance after an order for compliance is issued under paragraph (3), the Secretary may issue an order to the owner or operator to cease operations at the facility until the owner or operator complies with the order issued under paragraph (3). Notwithstanding the preceding sentence, the Secretary may not issue an order to cease operations under this paragraph to the owner or operator of a drinking water or wastewater facility unless the Secretary determines that continued operation of the facility represents a clear and present danger to homeland security.

(c) REPORTING PROCESS.—

(1) ESTABLISHMENT.—The Secretary shall establish, and provide information to the public regarding a process by which any person may submit a report to the Secretary regarding problems, deficiencies, or vulnerabilities at a covered chemical facility associated with the risk of a chemical facility terrorist incident.

(2) CONFIDENTIALITY.—The Secretary shall keep confidential the identity of a person that submits a report under paragraph (1) and any such report shall be treated as protected information under section 2108(f) to the extent that it does not consist of publicly available information.

(3) ACKNOWLEDGMENT OF RECEIPT.—If a report submitted under paragraph (1) identifies the person submitting the report, the Secretary shall respond promptly to such person to acknowledge receipt of the report.

(4) STEPS TO ADDRESS PROBLEMS.—The Secretary shall review and consider the information provided in any report submitted under paragraph (1) and shall take appropriate steps under this title to address any problem, deficiency, or vulnerability identified in the report.

(d) RETALIATION PROHIBITED.—

(1) PROHIBITION.—No owner or operator of a chemical facility, profit or not-for-profit corporation, association, or any contractor, subcontractor or agent thereof, or a Federal, State, local, or tribal government agency may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, security clearance or other access to classified or sensitive information, or other privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

(A) notified the Secretary, the owner or operator of a chemical facility, or the employee's employer of an alleged violation of this title, including communications related to carrying out the employee's job duties;

(B) refused to engage in any practice made unlawful by this title, if the employee has identified the alleged illegality to the employer;

(C) testified before or otherwise provided information relevant for Congress or for any Federal or State proceeding regarding any provision (or proposed provision) of this title;

(D) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this title;

(E) testified or is about to testify in any such proceeding; or

(F) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purposes of this title.

(2) **ENFORCEMENT ACTION.**—Any employee covered by this section who alleges discrimination by an employer in violation of subsection (a) may bring an action governed by the rules and procedures, legal burdens of proof, and remedies applicable under subsections (c) through (g) of section 20109 of title 49, United States Code.

SEC. 2106. PENALTIES.

(a) CIVIL PENALTIES.—

(1) **IN GENERAL.**—The Secretary may bring an action in a United States district court against any owner or operator of a chemical facility that violates or fails to comply with—

(A) any order issued by the Secretary under this title; or

(B) any site security plan approved by the Secretary under this title.

(2) **RELIEF.**—In any action under paragraph (1), a court may issue an order for injunctive relief and may award a civil penalty of not more than \$50,000 for each day on which a violation occurs or a failure to comply continues.

(b) **PENALTIES FOR UNAUTHORIZED DISCLOSURE.**—Any officer or employee of a Federal, State, local, or tribal government agency who, in a manner or to an extent not authorized by law, knowingly discloses any record containing protected information described in section 2108(f) shall—

(1) be imprisoned not more than 1 year, fined under chapter 227 of title 18, United States Code, or both; and

(2) if an officer or employee of the Government, be removed from Federal office or employment.

(c) **TREATMENT OF INFORMATION IN ADJUDICATIVE PROCEEDINGS.**—In a proceeding under this title, information protected under section 2108, or related vulnerability or security information, shall be treated in any judicial or administrative action as if the information were classified material.

SEC. 2107. FEDERAL PREEMPTION.

(a) **IN GENERAL.**—Nothing in this title shall preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance with respect to chemical facility security to deter, detect, or respond to a chemical facility terrorist incident that is more stringent than a regulation, requirement, or standard of performance issued pursuant to

this title, or shall otherwise impair any right or jurisdiction of any State or political subdivision thereof with respect to chemical facilities within that State or political subdivision thereof unless a direct conflict exists between this title and the regulation, requirement, or standard of performance issued by a State or political subdivision thereof.

(b) OTHER REQUIREMENTS.—Nothing in this title shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance relating to environmental protection, health, or safety.

SEC. 2108. PROTECTION OF INFORMATION.

(a) PROHIBITION OF PUBLIC DISCLOSURE OF PROTECTED INFORMATION.—

(1) IN GENERAL.—The Secretary shall ensure that protected information, as described in subsection (f), is not disclosed except as provided in this title.

(2) SPECIFIC PROHIBITIONS.—In carrying out paragraph (1), the Secretary shall ensure that protected information is not disclosed—

(A) by any Federal agency under section 552 of title 5, United States Code; or

(B) under any State or local law.

(b) REGULATIONS.—

(1) IN GENERAL.—In carrying out the requirements of this title, the Secretary shall prescribe such regulations, and may issue such orders, as necessary to prohibit the unauthorized disclosure of protected information, as described in subsection (f).

(2) REQUIREMENTS.—The regulations prescribed under paragraph (1) shall—

(A) allow for information sharing, on a confidential basis, with and between, Federal, State, local, and tribal law enforcement officials, and emergency response providers, and appropriate supervisory and non-supervisory chemical facility personnel, and employee representatives, if any, with security, operational, or fiduciary responsibility for the facility;

(B) provide for the confidential use of protected information in any administrative or judicial proceeding, including placing under seal any such information that is contained in any filing, order, or other document used in such proceedings that could otherwise become part of the public record;

(C) limit access to protected information to persons designated by the Secretary; and

(D) ensure, to the maximum extent practicable, that—

(i) protected information shall be maintained in a secure location; and

(ii) access to protected information shall be limited as may be necessary to—

(I) enable enforcement of this title; or

(II) address an imminent and substantial threat to security or an imminent chemical facility terrorist incident.

(c) OTHER OBLIGATIONS UNAFFECTED.—Nothing in this section affects any obligation of the owner or operator of a chemical facility

to submit or make available information to facility employees, employee organizations, or a Federal, State, tribal, or local government agency under, or otherwise to comply with, any other law.

(d) *SUBMISSION OF INFORMATION TO CONGRESS.*—Nothing in this title shall be construed as authorizing the withholding of any information from Congress.

(e) *DISCLOSURE OF INDEPENDENTLY FURNISHED INFORMATION.*—Nothing in this title shall be construed as affecting any authority or obligation of a Federal agency to disclose any record or information that the Federal agency obtains from a chemical facility under any other law.

(f) *PROTECTED INFORMATION.*—

(1) *IN GENERAL.*—For purposes of this section, protected information includes the following:

(A) The criteria and data used by the Secretary to assign chemical facilities to risk-based tiers under section 2102 and the tier to which each such facility is assigned.

(B) The security vulnerability assessments and site security plans submitted to the Secretary under this title.

(C) Information concerning the risk-based chemical facility security performance standards for a chemical facility under section 2103(c).

(D) Any other information generated or collected by a Federal, State, local, or tribal government agency or by a chemical facility for the purpose of carrying out or complying with this title—

(i) that describes any vulnerability of a chemical facility to an act of terrorism;

(ii) that describes the assignment of any chemical facility to a risk-based tier under this title; or

(iii) that describes any security measure (including any procedure, equipment, training, or exercise) for the protection of a chemical facility from an act of terrorism.

(2) *EXCLUSIONS.*—For purposes of this section, protected information does not include—

(A) information that is publicly available;

(B) information that a chemical facility has disclosed other than in accordance with this section; or

(C) information that, if disclosed, would not be detrimental to the security of a chemical facility.

SEC. 2109. CERTIFICATION BY THIRD-PARTY ENTITIES.

(a) *CERTIFICATION BY THIRD-PARTY ENTITIES.*—The Secretary may designate a third-party entity to carry out any function under subsection (e)(5) of section 2103, subsection (b), (c), or (d) of section 2104, or subsection (b)(1) of section 2105.

(b) *QUALIFICATIONS.*—The Secretary shall establish standards for the qualifications of third-party entities, including knowledge of physical infrastructure protection, cybersecurity, chemical facility security, hazard analysis, chemical process engineering, chemical process safety reviews, and other such factors that the Secretary determines to be necessary.

(c) *PROCEDURES AND REQUIREMENTS FOR PRIVATE ENTITIES.*—Before designating a third-party entity to carry out a function under subsection (a), the Secretary shall—

(1) develop, document, and update, as necessary, minimum standard operating procedures and requirements applicable to such entities designated under subsection (a), including—

(A) conducting a 90-day independent review of the procedures and requirements (or updates thereto) and the results of the analyses of such procedures (or updates thereto) pursuant to subtitle G of title VIII; and

(B) upon completion of the independent review under subparagraph (A), designating any procedure or requirement (or any update thereto) as a qualified anti-terrorism technology pursuant to section 862(b);

(2) conduct safety and hazard analyses of the standard operating procedures and requirements developed under paragraph (1);

(3) conduct a review of the third-party entities' business engagements to ensure that no conflict exists that could compromise the execution of any functions under subsection (e)(5) of section 2103, subsection (b), (c), or (d) of section 2104, or subsection (c)(1) of section 2105; and

(4) conduct a review of the third-party entities' business practices and disqualify any of these organizations that offer related auditing or consulting services to chemical facilities as private sector vendors.

(d) **ENSURING CONTRACTING WITH CERTAIN SMALL BUSINESS CONCERNS.**—

(1) **REQUIREMENTS FOR PRIME CONTRACTS.**—*The Secretary shall include in each contract awarded to a third-party entity—*

(A) *a requirement that the third-party entity develop and implement a plan for the award of subcontracts, as appropriate, to small business concerns and disadvantaged business concerns in accordance with other applicable requirements, including the terms of such plan, as appropriate; and*

(B) *a requirement that the third-party entity shall submit to the Secretary, during performance of the contract, periodic reports describing the extent to which the contractor has complied with such plan, including specification (by total dollar amount and by percentage of the total dollar value of the contract) of the value of subcontracts awarded at all tiers of subcontracting to small business concerns, including socially and economically disadvantaged small businesses concerns, small business concerns owned and controlled by service-disabled veterans, HUBZone small business concerns, small business concerns eligible to be awarded contracts pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)), and historically black colleges and universities and Hispanic-serving institutions, tribal colleges and universities, and other minority institutions.*

(2) **DEFINITIONS.**—*For purposes of this subsection:*

(A) *The terms “socially and economically disadvantaged small businesses concern”, “small business concern owned and controlled by service-disabled veterans”, and “HUBZone small business concern” have the meaning given*

such terms under the Small Business Act (15 U.S.C. 631 et seq.).

(B) The term “historically black colleges and universities” means part B institutions under title III of the Higher Education Act of 1965 (20 U.S.C. 1061).

(C) The term “Hispanic-serving institution” has the meaning given such term under title V of the Higher Education Act of 1965 (20 U.S.C. 1101a(a)(5)).

(D) The term “tribal colleges and universities” has the meaning given such term under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 et seq.).

(3) UTILIZATION OF ALLIANCES.—The Secretary shall, to the maximum extent practicable, seek to facilitate the award of contracts to conduct certification under subsection (a) to alliances of business concerns referred to in paragraph (1)(B).

(4) ANNUAL REPORT.—

(A) IN GENERAL.—By not later than October 31 of each year, the Secretary shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the award of contracts to conduct certification under subsection (a) to business concerns referred to in paragraph (1)(B) during the fiscal year preceding the fiscal year in which the report is submitted.

(B) CONTENTS.—The Secretary shall include in each report under subparagraph (A)—

(i) a specification of the value of such contracts, by dollar amount and as a percentage of the total dollar value of all contracts awarded by the Department in such fiscal year;

(ii) a specification of the total dollar value of such contracts awarded to each of the categories of business concerns referred to in paragraph (1)(B); and

(iii) if the percentage of the total dollar value of contracts awarded under this section specified under clause (i) is less than 25 percent, an explanation of—

(I) why the percentage is less than 25 percent; and

(II) what will be done to ensure that the percentage for the following fiscal year will not be less than 25 percent.

(e) TECHNICAL REVIEW AND APPROVAL.—Not later than 60 days after the date on which the results of the safety and hazard analysis of the standard operating procedures and requirements are completed under subsection (c)(2), the Secretary shall—

(1) complete a technical review of the procedures and requirements (or updates thereto) under sections 862(b) and 863(d)(2); and

(2) approve or disapprove such procedures and requirements (or updates thereto).

(f) EFFECT OF APPROVAL.—

(1) ISSUANCE OF CERTIFICATE OF CONFORMANCE.—In accordance with section 863(d)(3), the Secretary shall issue a certifi-

cate of conformance to a third-party entity to perform a function under subsection (a) if the entity—

(A) demonstrates to the satisfaction of the Secretary the ability to perform functions in accordance with standard operating procedures and requirements (or updates thereto) approved by the Secretary under this section;

(B) agrees to—

(i) perform such function in accordance with such standard operating procedures and requirements (or updates thereto); and

(ii) maintain liability insurance coverage at policy limits and in accordance with conditions to be established by the Secretary pursuant to section 864; and

(C) signs an agreement to protect the proprietary and confidential information of any chemical facility with respect to which the entity will perform such function.

(2) **LITIGATION AND RISK MANAGEMENT PROTECTIONS.**—A third-party entity that maintains liability insurance coverage at policy limits and in accordance with conditions to be established by the Secretary pursuant to section 864 and receives a certificate of conformance under paragraph (1) shall receive all applicable litigation and risk management protections under sections 863 and 864.

(3) **RECIPROCAL WAIVER OF CLAIMS.**—A reciprocal waiver of claims shall be deemed to have been entered into between a third-party entity that receives a certificate of conformance under paragraph (1) and its contractors, subcontractors, suppliers, vendors, customers, and contractors and subcontractors of customers involved in the use or operation of any function performed by the third-party entity under subparagraph (a).

(4) **INFORMATION FOR ESTABLISHING LIMITS OF LIABILITY INSURANCE.**—A third-party entity seeking a certificate of conformance under paragraph (1) shall provide to the Secretary necessary information for establishing the limits of liability insurance required to be maintained by the entity under section 864(a).

(g) **MONITORING.**—The Secretary shall regularly monitor and inspect the operations of a third-party entity that performs a function under subsection (a) to ensure that the entity is meeting the minimum standard operating procedures and requirements established under subsection (c) and any other applicable requirement under this section.

SEC. 2110. METHODS TO REDUCE THE CONSEQUENCES OF A TERRORIST ATTACK.

(a) **ASSESSMENT REQUIRED.**—The owner or operator of a covered chemical facility shall include in the site security plan conducted pursuant to section 2103, an assessment of methods to reduce the consequences of a terrorist attack on that chemical facility, including—

(1) a description of the methods to reduce the consequences of a terrorist attack assessed by the covered chemical facility;

(2) the degree to which each method to reduce the consequences of a terrorist attack could, if applied, reduce the potential extent of death, injury, or serious adverse effects to human health resulting from a terrorist release;

(3) *the technical viability, costs, avoided costs (including liabilities), savings, and applicability of applying each method to reduce the consequences of a terrorist attack; and*

(4) *any other information that the owner or operator of the covered chemical facility considered in conducting the assessment.*

(b) **IMPLEMENTATION.—**

(1) **IMPLEMENTATION.**—*The owner or operator of a chemical facility assigned to a high-risk tier under section 2102(c)(3) that is required to conduct an assessment under subsection (a) shall implement methods to reduce the consequences of a terrorist attack on the chemical facility if the Secretary determines, based on an assessment in subsection (a), that the implementation of such methods at the facility—*

(A) *would significantly reduce the risk of death, injury, or serious adverse effects to human health resulting from a chemical facility terrorist incident but would not increase the interim storage of a substance of concern outside the facility or directly result in the creation of a new covered chemical facility assigned to a high-risk tier under section 2102(c)(3) or the assignment of an existing facility to a high-risk tier;*

(B) *can feasibly be incorporated into the operation of the covered chemical facility; and*

(C) *would not significantly and demonstrably impair the ability of the owner or operator of the covered chemical facility to continue the business of the facility at a location within the United States.*

(2) **REVIEW OF INABILITY TO COMPLY.—**

(A) **IN GENERAL.**—*An owner or operator of a covered chemical facility who is unable to comply with the Secretary's determination under paragraph (1) shall, within 60 days of receipt of the Secretary's determination, provide to the Secretary a written explanation that includes the reasons thereto.*

(B) **REVIEW.**—*Not later than 60 days of receipt of an explanation submitted under subparagraph (A), the Secretary after consulting with the owner or operator who submitted such explanation, shall provide to the owner or operator a written determination of whether implementation shall be required pursuant to paragraph (1). If the Secretary determines that implementation is required, the facility shall be required to begin implementation within 180 days of that determination.*

(c) **PROVISION OF INFORMATION ON ALTERNATIVE APPROACHES.—**

(1) **IN GENERAL.**—*The Secretary shall provide information to chemical facilities on the use and availability of methods to reduce the consequences of a terrorist attack at a covered chemical facility to aid a covered chemical facility in meeting the requirements of subsection (a).*

(2) **INFORMATION TO BE INCLUDED.**—*The information under paragraph (1) may include information about—*

(A) *general and specific types of such methods;*

(B) combinations of chemical sources, substances of concern, and hazardous processes or conditions for which such methods could be appropriate;

(C) the availability of specific methods to reduce the consequences of a terrorist attack;

(D) the costs and cost savings resulting from the use of such methods;

(E) emerging technologies that could be transferred from research models or prototypes to practical applications;

(F) the availability of technical assistance and best practices; and

(G) such other matters as the Secretary determines is appropriate.

(3) **COLLECTION OF INFORMATION.**—The Secretary may collect information necessary to fulfill the requirements of paragraph (1)—

(A) from information obtained from owners or operators of chemical facilities pursuant to this title, including those who have registered such facilities pursuant to part 68 of title 40 Code of Federal Regulations (or successor regulations);

(B) from studies and reports published by academic institutions, National Laboratories, and other relevant and reputable public and private sector experts; and

(C) through such other methods as the Secretary deems appropriate.

(4) **PUBLIC AVAILABILITY.**—Information made available publicly under this subsection shall not identify any specific chemical facility, violate the protection of information provisions under section 2108, or disclose any confidential or proprietary information.

(d) **PROTECTED INFORMATION.**—An assessment prepared under subsection (a) is protected information under section 2108(f).

(e) **FUNDING FOR METHODS TO REDUCE THE CONSEQUENCES OF A TERRORIST ATTACK.**—The Secretary shall make funds available to help defray the cost of implementing methods to reduce the consequences of a terrorist attack to covered chemical facilities that are required by the Secretary to implement such methods or that voluntarily choose to implement such methods. In making such funds available, the Secretary shall give special consideration to those facilities required by the Secretary to implement methods to reduce the consequences of a terrorist attack pursuant to subsection (b) and water and wastewater facilities administered by State, local, tribal, or municipal authorities that are subject to the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) or section 1433 of the Safe Drinking Water Act (42 U.S.C. 300i-2).

(f) **PUBLICLY-OWNED WATER AND WASTEWATER TREATMENT FACILITIES.**—Notwithstanding any other provision of this title, the Secretary may not require a publicly-owned facility regulated under the Safe Drinking Water Act (42 U.S.C. 300i-2) or the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) to implement methods to reduce the consequences of a terrorist attack under subsection (b) unless that facility receives funding under subsection (e).

SEC. 2111. APPLICABILITY.

This title shall not apply to—

(1) any chemical facility that is owned and operated by the Secretary of Defense, the Attorney General, or the Secretary of Energy;

(2) the transportation in commerce, including incidental storage, of any substance of concern regulated as a hazardous material under chapter 51 of title 49, United States Code; or

(3) any chemical facility that is owned or operated by a licensee or certificate holder of the Nuclear Regulatory Commission.

SEC. 2112. SAVINGS CLAUSE.

Nothing in this title shall affect or modify in any way any obligation or liability of any person under any other Federal law, including section 112 of the Clean Air Act (42 U.S.C. 7412), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.), the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Occupational Safety and Health Act (29 U.S.C. 651 et seq.), the National Labor Relations Act (29 U.S.C. 151 et seq.), the Emergency Planning and Community Right to Know Act of 1996 (42 U.S.C. 11001 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), the Maritime Transportation Security Act of 2002 (Public Law 107-295), and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

SEC. 2113. OFFICE OF CHEMICAL FACILITY SECURITY.

(a) *IN GENERAL.*—There is in the Department an Office of Chemical Facility Security, headed by a Director, who shall be a member of the Senior Executive Service in accordance with subchapter VI of chapter 33 of title 5, United States Code, under section 5382 of that title, and who shall be responsible for carrying out the responsibilities of the Secretary under this title.

(b) *PROFESSIONAL QUALIFICATIONS.*—The individual selected by the Secretary as the Director Office of Chemical Facility Security should have a demonstrated knowledge of physical infrastructure protection, cybersecurity, chemical facility security, hazard analysis, chemical process engineering, chemical process safety reviews, and other such factors that the Secretary determines to be necessary.

(c) *SELECTION PROCESS.*—The Secretary shall make a reasonable effort to select an individual to serve as the Director from among a group of candidates that is diverse with respect to race, ethnicity, age, gender, and disability characteristics and submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate information on the selection process, including details on efforts to assure diversity among the candidates considered for this position.

SEC. 2114. SECURITY BACKGROUND CHECKS OF COVERED INDIVIDUALS AT CERTAIN CHEMICAL FACILITIES.

(a) *REGULATIONS ISSUED BY THE SECRETARY.*—

(1) *IN GENERAL.*—The Secretary shall issue regulations to require a covered chemical facility assigned to a high-risk tier under section 2102(c)(3) to subject covered individuals who have access to restricted areas or critical assets or who are determined to require security background checks under risk-

based guidance to security background checks based on risk-based guidance. Such regulations shall set forth—

(A) the scope of the security background checks, including the types of disqualifying offenses and the time period covered for each covered individual;

(B) the processes to conduct the security background checks;

(C) the necessary biographical information and other data required in order to conduct the security background checks; and

(D) a redress process for adversely-affected covered individuals consistent with subsections (b) and (c).

(2) **ENFORCEMENT.**—If the owner or operator of a covered chemical facility that is subject to paragraph (1) fails to comply with the requirements of that paragraph, the Secretary may issue a penalty against the owner or operator in accordance with section 2106.

(3) **REQUIREMENT FOR REDRESS PROCESS.**—If a covered chemical facility performs a security background check on a covered individual to comply with regulations issued by the Secretary under paragraph (1), the Secretary shall not consider the facility in compliance unless an adequate redress process as described in subsection (c) is provided to covered individuals.

(b) **REQUIREMENTS.**—Upon issuance of a final regulation under subsection (a), or any future rule, regulation, directive or guidance, by the Secretary regarding a security background check of a covered individual, the Secretary shall prohibit the covered chemical facility from making an adverse employment decision, including removal or suspension of the employee, due to such rule, regulation, directive, or guidance with respect to a covered individual unless the covered individual—

(1) has been convicted of, has been found not guilty of by reason of insanity of, or is under want, warrant, or indictment for a permanent disqualifying criminal offense listed in part 1572 of title 49, Code of Federal Regulations;

(2) was convicted of or found not guilty by reason of insanity of an interim disqualifying criminal offense listed in part 1572 of title 49, Code of Federal Regulations, within 7 years of the date on which the chemical facility performs the security background check;

(3) was incarcerated for an interim disqualifying criminal offense listed in part 1572 of title 49, Code of Federal Regulations, and released from incarceration within 5 years of the date that the chemical facility performs the security background check;

(4) is determined, as a result of the security background check, to be a known terrorist or to have terrorist ties; or

(5) is determined, as a result of the security background check, not to be legally authorized to work in the United States.

(c) **REDRESS PROCESS.**—Upon the issuance of a final regulation under subsection (a), or any future rule, regulation, directive, or guidance, requiring a covered chemical facility to perform a security background check of a covered individual, the Secretary shall—

(1) require an adequate redress process for a covered individual subjected to an adverse employment decision, including

removal or suspension of the employee, due to such rule, regulation, directive, or guidance that is consistent with the appeals and waiver processes established for applicants for commercial motor vehicle hazardous materials endorsements and transportation workers at ports, as required by section 70105(c) of title 46, United States Code, including all rights to hearings before an administration law judge, scope of review, a review of an unclassified summary of classified evidence equivalent to the summary provided in part 1515 of title 49, Code of Federal Regulations, and procedures for new evidence for both appeals and waiver decisions;

(2) have the authority to order an appropriate remedy, including reinstatement of the covered individual, should the Secretary determine that a covered chemical facility wrongfully made an adverse employment decision regarding a covered individual pursuant to such rule, regulation, directive, or guidance;

(3) ensure that the redress process required under this subsection affords to the covered individual a full disclosure of any public-record event covered by subsection (b) that provides the basis for an adverse employment decision; and

(4) ensure that covered individual receives the individual's full wages and benefits until all appeals and waiver procedures are exhausted.

(d) **FALSE STATEMENTS.**—

(1) **IN GENERAL.**—A covered chemical facility may not knowingly misrepresent to an employee or other relevant person, including an arbiter involved in a labor arbitration, the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the Secretary related to security background check requirements for covered individuals when conducting a security background check under this section.

(2) **DEADLINE FOR REGULATIONS.**—Not later than 1 year after the date of enactment of the Chemical Facility Anti-Terrorism Act of 2008, the Secretary shall issue a regulation that prohibits a covered chemical facility from knowingly misrepresenting to an employee or other relevant person, including an arbiter involved in a labor arbitration, the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the Secretary related to security background check requirements for covered individuals when conducting a security background check.

(e) **RESTRICTIONS ON USE AND MAINTENANCE OF INFORMATION.**—Information obtained under this section by the Secretary or a covered chemical facility that is an employer of a covered individual shall be handled as follows:

(1) Such information may not be made available to the public.

(2) Such information may not be accessed by employees of the facility except for such employees who are directly involved with collecting the information or conducting or evaluating security background checks.

(3) Such information shall be maintained confidentially by facility and the Secretary and may be used only for making determinations under this section.

(4) *The Secretary may share such information with other Federal law enforcement agencies.*

(f) *RIGHTS AND RESPONSIBILITIES.—Nothing in the section shall be construed to abridge any right or responsibility of a covered individual or covered chemical facility under any other Federal, State, local, or tribal law or collective bargaining agreement.*

(g) *NO PREEMPTION OF FEDERAL OR STATE LAW.—Nothing in this section shall be construed to preempt a Federal, State, local, or tribal law that requires criminal history background checks, checks on the authorization of an individual to work in the United States, or other background checks of covered individuals.*

(h) *DEFINITION OF SECURITY BACKGROUND CHECK.—The term “security background check” means a review at no cost to any covered individual of the following for the purpose of identifying individuals who may pose a threat to chemical facility security, to national security, or of terrorism.*

(1) *Relevant databases to verify and validate identity.*

(2) *Relevant criminal history databases.*

(3) *In the case of an alien (as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3))), the relevant data bases to determine the status of the alien under the immigration laws of the United States.*

(4) *Relevant databases to identify terrorists or people with known ties to terrorists.*

(5) *Other relevant information or data bases, as determined by the Secretary.*

(i) *INCLUDED INDIVIDUALS.—The Secretary shall require any individual at a covered chemical facility or associated with a covered chemical facility who is provided a copy of a security vulnerability assessment or site security plan to be subjected to a security background check.*

(j) *SAVINGS CLAUSE.—Nothing in this section shall be construed as creating any new right or modifying any existing right of an individual to appeal a determination by the Secretary as a result of a check against a terrorist watch list.*

SEC. 2115. NATIONAL CHEMICAL SECURITY CENTER OF EXCELLENCE.

(a) *ESTABLISHMENT.—*

(1) *IN GENERAL.—The Secretary shall establish a National Chemical Security Center of Excellence to conduct research and education and to develop technologies to lower the overall risk of terrorist chemical attack, including technologies or practices to decrease threats, vulnerabilities, and consequences in order to ensure the security of chemical facilities.*

(2) *ADDITIONAL REQUIREMENTS.—In establishing the National Chemical Security Center of Excellence under paragraph (1), or in reorganizing any other chemical, biological, or agricultural Center of Excellence established before the date of enactment of the Chemical Facility Anti-Terrorism Act of 2008, the Secretary shall—*

(A) *recognize the unique scientific, technical, and funding requirements of the chemical, biological, and agricultural fields with respect to the mission of the Department of Homeland Security; and*

(B) *maintain the National Chemical Security Center of Excellence and any such other chemical, biological, or agri-*

cultural Center of Excellence as a distinct entity with respect to organization and funding.

(b) *DESIGNATION OF LEAD INSTITUTION.*—*The Secretary shall select at least one of the institutions identified in subsection (c) as the lead institution responsible for coordinating the National Chemical Security Center of Excellence. Any member institution that is part of the consortium under subsection (c) may serve as a lead institution for the Center.*

(c) *MEMBER INSTITUTIONS; CONSORTIUM.*—

(1) *CONSORTIUM.*—*The lead institution selected under subsection (b) shall execute agreements with the other institutions of higher education identified in this subsection and other institutions designated by the Secretary to develop a consortium to assist in accomplishing the goals of the Center.*

(2) *MEMBERS.*—*The National Chemical Security Center of Excellence shall consist of at least three institutions of higher education with current expertise or the capability to produce appropriate expertise, including—*

(A) one historically black college or university; and

(B) one Hispanic-serving institution.

(3) *INCLUSIONS.*—*The Secretary shall ensure that an appropriate number of any additional partner colleges or universities designated by the Secretary under this subsection are historically black colleges and universities, Hispanic-serving institutions, and tribal colleges and universities.*

(4) *DEFINITIONS.*—*For the purposes of this subsection, the terms “historically black colleges and universities”, “Hispanic-serving institutions”, and “tribal colleges and universities” have the meanings given such terms under section 2109(d)(2).*

SEC. 2116. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Secretary of Homeland Security to carry out this title—

(1) *\$325,000,000 for fiscal year 2010, of which \$100,000,000 shall be made available to provide funding for methods to reduce the consequences of a terrorist attack pursuant to section 2110(e);*

(2) *\$300,000,000 for fiscal year 2011, of which \$75,000,000 shall be made available to provide funding for methods to reduce the consequences of a terrorist attack pursuant to section 2110(e); and*

(3) *\$275,000,000 for fiscal year 2012, of which \$50,000,000 shall be made available to provide funding for methods to reduce the consequences of a terrorist attack pursuant to section 2110(e).*

SECTION 550 OF THE DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2007

[SEC. 550. (a) No later than six months after the date of enactment of this Act, the Secretary of Homeland Security shall issue interim final regulations establishing risk-based performance standards for security of chemical facilities and requiring vulnerability assessments and the development and implementation of site security plans for chemical facilities: *Provided*, That such regu-

lations shall apply to chemical facilities that, in the discretion of the Secretary, present high levels of security risk: *Provided further*, That such regulations shall permit each such facility, in developing and implementing site security plans, to select layered security measures that, in combination, appropriately address the vulnerability assessment and the risk-based performance standards for security for the facility: *Provided further*, That the Secretary may not disapprove a site security plan submitted under this section based on the presence or absence of a particular security measure, but the Secretary may disapprove a site security plan if the plan fails to satisfy the risk-based performance standards established by this section: *Provided further*, That the Secretary may approve alternative security programs established by private sector entities, Federal, State, or local authorities, or other applicable laws if the Secretary determines that the requirements of such programs meet the requirements of this section and the interim regulations: *Provided further*, That the Secretary shall review and approve each vulnerability assessment and site security plan required under this section: *Provided further*, That the Secretary shall not apply regulations issued pursuant to this section to facilities regulated pursuant to the Maritime Transportation Security Act of 2002, Public Law 107-295, as amended; Public Water Systems, as defined by section 1401 of the Safe Drinking Water Act, Public Law 93-523, as amended; Treatment Works as defined in section 212 of the Federal Water Pollution Control Act, Public Law 92-500, as amended; any facility owned or operated by the Department of Defense or the Department of Energy, or any facility subject to regulation by the Nuclear Regulatory Commission.

[(b) Interim regulations issued under this section shall apply until the effective date of interim or final regulations promulgated under other laws that establish requirements and standards referred to in subsection (a) and expressly supersede this section: *Provided*, That the authority provided by this section shall terminate three years after the date of enactment of this Act.

[(c) Notwithstanding any other provision of law and subsection (b), information developed under this section, including vulnerability assessments, site security plans, and other security related information, records, and documents shall be given protections from public disclosure consistent with similar information developed by chemical facilities subject to regulation under section 70103 of title 46, United States Code: *Provided*, That this subsection does not prohibit the sharing of such information, as the Secretary deems appropriate, with State and local government officials possessing the necessary security clearances, including law enforcement officials and first responders, for the purpose of carrying out this section, provided that such information may not be disclosed pursuant to any State or local law: *Provided further*, That in any proceeding to enforce this section, vulnerability assessments, site security plans, and other information submitted to or obtained by the Secretary under this section, and related vulnerability or security information, shall be treated as if the information were classified material.

[(d) Any person who violates an order issued under this section shall be liable for a civil penalty under section 70119(a) of title 46, United States Code: *Provided*, That nothing in this section confers

upon any person except the Secretary a right of action against an owner or operator of a chemical facility to enforce any provision of this section.

[(e) The Secretary of Homeland Security shall audit and inspect chemical facilities for the purposes of determining compliance with the regulations issued pursuant to this section.

[(f) Nothing in this section shall be construed to supersede, amend, alter, or affect any Federal law that regulates the manufacture, distribution in commerce, use, sale, other treatment, or disposal of chemical substances or mixtures.

[(g) If the Secretary determines that a chemical facility is not in compliance with this section, the Secretary shall provide the owner or operator with written notification (including a clear explanation of deficiencies in the vulnerability assessment and site security plan) and opportunity for consultation, and issue an order to comply by such date as the Secretary determines to be appropriate under the circumstances: *Provided*, That if the owner or operator continues to be in noncompliance, the Secretary may issue an order for the facility to cease operation, until the owner or operator complies with the order.

[(h) This section shall not preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance with respect to chemical facility security that is more stringent than a regulation, requirement, or standard of performance issued under this section, or otherwise impair any right or jurisdiction of any State with respect to chemical facilities within that State, unless there is an actual conflict between this section and the law of that State.]

* * * * *

MINORITY, ADDITIONAL, AND DISSENTING VIEWS

MINORITY VIEWS

Introduction

Securing our Nation's chemical facilities has long been a priority for the Committee on Homeland Security (Committee). During the 109th Congress, the Committee worked on a bipartisan basis to develop comprehensive chemical facility security legislation (H.R. 5695). This legislation, which was adopted by the Committee by a vote of 16-2, was never considered by the House, but became the basis for section 550 of the Department of Homeland Security (DHS) Appropriations Act, 2007 (Public Law 109-295). Section 550 gave the Department historic authority to regulate the security of high-risk chemical facilities. Recognizing the importance of these facilities and the threat facing them, section 550 included aggressive timelines and serious penalties for non-compliance. However, section 550 also included a three year sunset clause, ensuring Congress would need to revisit the issue prior to October 2009. The DHS Appropriations Act was signed into law on October 4, 2006, and two months later DHS issued an advanced notice of proposed rulemaking, exercising the new authority.

After receiving thousands of comments, DHS finalized the Chemical Facility Anti-Terrorism Standards (CFATS), which became effective on June 8, 2007. Appendix A, the list of chemicals of interest that trigger the initial requirement to submit information to DHS, remained open for comment for an additional 30 days. After receiving over 4,000 additional comments, DHS finalized Appendix A on November 20, 2007. Facilities which have more than the screening threshold of a chemical of interest had 60 days to submit initial information to DHS through the "Top-Screen." The "Top-Screen" provides baseline data to DHS which allows the Secretary to determine whether the facility will be further regulated. As of the deadline of January 22, 2008, over 25,000 facilities submitted information, with thousands of others seeking extensions. DHS is in the process of reviewing this information and notifying owners of next steps required. By the end of the year, hundreds of tier I facilities - those chemical facilities which present the highest risk - will have completed a security vulnerability assessment and site security plan, and DHS will be in the process of inspecting and verifying compliance with implementation.

It is against this backdrop that the Committee considered legislation to permanently enact the CFATS regulations. Although the bill in some places takes into consideration the current regulations, we remain concerned that significant changes elsewhere in the bill would force DHS to rewrite the current regulations. Such a result, Departmental witnesses have testified, would put the current program on hold while the new regulations were promulgated. Given

the urgency with which Congress acted in 2006 giving the Department this authority, we do not believe that it is now timely to alter the program significantly before it is fully implemented and further delay meaningful chemical facility security. Even what may be considered simple changes to requirements for security vulnerability assessments or site security plans could require a comprehensive change in the current tools being developed by the Department to implement the regulations.

For example, the current regulations require that a security vulnerability assessment assess “hazards and consequences of concern for the facility.” However, the bill requires that facilities assess “any hazard” that could result from a terrorist incident. Interpreted strictly, a facility would have to consider all possible down-stream effects and potential liabilities of any terrorist attack scenario - no matter how implausible. This would require a major change in the structure of the vulnerability assessment tool and the subsequent site security plans (which are required by the bill to address the vulnerabilities identified in the assessment). To clarify this, Representative Mark Souder offered an amendment that would require the consideration of hazards “to the extent feasible” as opposed to just “any hazard.” This would have been more consistent with the current regulatory language, while still requiring that hazards be identified by the facility. Rather than exposing a well-meaning chemical facility to possible penalties for inadvertently violating the “any hazard” requirement, this amendment would have recognized the pragmatic limitations of such language. Unfortunately, the Majority rejected this opportunity. Other requirements in the bill would have similar effects of halting the on-going progress of the Department and chemical facilities. In particular, requiring consideration and possible implementation of “inherently safer technology” (IST), would make current site security plans developed insufficient and any implemented security measures inadequate.

Inherently Safer Technology

Section 550 of the DHS Appropriations Act, 2007, specifically prohibited the Department from requiring particular security measures. The goal was to provide a flexible regulatory approach, where the security performance of the facility was regulated, while the facility could choose which security measures met the performance standards. This recognized the variety of facilities that might be covered by the regulations, from small “mom and pop” facilities, to agricultural operations, to large international corporations, to oil and natural gas refineries. Departing from this performance-based approach, the bill includes provisions mandating consideration of “inherently safer technology” and in some cases allows the Secretary to mandate implementation.

Section 2110 of the bill includes a requirement that all “covered chemical facilities” consider the implementation of “methods to reduce the consequences of a terrorist attack.” As defined in the bill, a “covered chemical facility” is any facility that the Secretary determines is of sufficient risk based on the potential threat, the potential consequences, and the facility’s proximity to population centers (section 2102(c)). The Secretary bases this determination on information submitted regarding substances of concern that are “used,

stored, manufactured, processed or distributed” at the facility. The Department has estimated that under this bill, “covered chemical facilities” could include upwards of 10,000 facilities. This definition could include a wide range of facilities at the Secretary’s discretion - all of which would be required to consider the implementation of “methods to reduce consequences of a terrorist attack.”

These “methods” are defined broadly to include “input substitution”, “process redesign”, “technology modification”, and “use of less hazardous substances.” These terms are common descriptions used for “inherently safer technology.” As the definition implies, IST is not a technology, it is a mindset that is incorporated at every stage of the facility’s operations. The Department has stated that there is no good, agreed upon, definition for IST, and regulating such a concept would be difficult at the very least, and probably impossible to do objectively.

Under this section each of at least 10,000 facilities, possibly more, would be required to consider 12, broad, detailed, process changes or substitutions, and justify the consideration of each to the Secretary, regardless of its level of risk. The justification to the Secretary, for each method considered, must include the degree to which the method can reduce the consequences of a terrorist attack; any costs or savings from applying each method; and “any other information” considered during the assessment. Although the Majority states that this assessment will not place a burden on smaller facilities, it is hard to see how it could not. In fact, the Majority’s witness at the February 26 hearing on the Committee print testified that the requirement that companies put into writing and justify certain processes over others, is a subjective and burdensome exercise in “paperwork.”

The Majority rejected an amendment offered by Representative Dan Lungren that would only require consideration of IST by facilities in the high-risk tier, not by all “covered chemical facilities.” This amendment not only would have been more consistent with the risk-based approach that this Committee has urged the Department to follow, but also would have been consistent with a bipartisan agreement reached in the 109th Congress during consideration of H.R. 5695 on the same issue. Rather than require all covered chemical facilities justify in writing to the Department their consideration of IST, Representative Lungren’s amendment would focus on those facilities that present the highest risk. The blanket provision retained by the Majority by rejecting this amendment may result in hours of lost work and thousands of dollars spent on meeting the requirements for little or no security benefit.

This amendment would also be more consistent with the current regulations, which allow States to implement non-conflicting regulations. The bill maintains this “actual conflict” preemption standard, under which states (such as New Jersey) would be able to implement their own requirements for IST consideration, if they consider it appropriate. The Federal regime, however, would remain risk-based, targeting limited resources at the facilities that pose the greatest risk. In rejecting this amendment, the Majority missed an opportunity to significantly improve this bill and build a bipartisan coalition of support.

Section 2110 also provides the Secretary the authority to require a chemical facility implement IST, if certain factors are met. Before requiring implementation, the Secretary must find that IST would “significantly reduce” the consequences of a terrorist attack; would not result in moving a facility to the highest risk tier; can “feasibly be incorporated”; and would not “significantly and demonstrably impair the ability of the owner to continue the business of the facility.” An amendment by Representative Charles Dent, accepted by the Majority, added to this last factor that the facility must be able to continue business “at a location within the United States.” We are pleased that this language was accepted, ensuring that an IST mandate would not close down U.S. facilities and push them overseas by making them less competitive.

However, an amendment offered by Representative Mark Souder was rejected by the Majority that would have improved this section further. Representative Souder’s amendment would require the Secretary to also determine that there are no security measures that can be implemented that would adequately secure the facility. The result is that the Secretary could only mandate IST as a last resort, when no other security measures are sufficient. The goal of the legislation is to provide for the security of chemical facilities. As such, facilities should be given every opportunity to adequately secure their facilities through traditional means, before the Secretary can mandate that certain chemicals not be used or certain processes be changed. This amendment would not have reduced the overall level of security at the facility, and would be consistent with the bill’s supposed emphasis on security. Instead, by rejecting Representative Souder’s amendment, the Majority leaves open the possibility that the Secretary can require a costly change in chemicals, even if traditional security measures would have resulted in equal levels of security.

Finally, in an effort to address the potential impact of this requirement on the Nation’s ability to provide for the National defense, Representative Souder offered an amendment that would have provided an exemption from the IST mandate for defense industrial base facilities. This amendment recognizes that the defense industrial base includes chemical facilities that supply the Armed Forces with munitions, weapons, and fuel. While these facilities should be required to protect their facilities through implementing a site security plan, the Secretary should not be able to mandate certain chemicals not be used. Given the ongoing Global War on Terrorism, facilities must have the flexibility to use the most appropriate chemicals necessary without unnecessary interference. Unfortunately, the Majority rejected this opportunity to recognize the unique role these facilities have in defending the Nation.

Security Background Checks

We are pleased that the bill includes provisions originally offered by Representative Ginny Brown-Waite during Subcommittee consideration of the bill regarding screening employees of high-risk chemical facilities against the terrorist watch list and immigration status databases. This language is intended to provide the Secretary with the authority to receive necessary information to screen employees at high risk chemical facilities against the terrorist

watch list. This authority is similar to authority exercised by the Secretary with regards to individuals who hold commercial driver licenses, rail and public transportation workers, and maritime workers. We recognize that the Secretary may not provide information to employers regarding the outcome of the check, depending on the classified nature of the database.

The bill creates an appeal and waivers process for security background checks “consistent” with that provided for applicants under the Transportation Worker Identification Credential (TWIC). That language is intended to extend in scope only to the immigration status check and the criminal history check - not the check of the terrorist watch list. That intent is consistent with the current scope of the TWIC program. To clarify that intent, the bill includes an amendment offered by Representative Paul Broun that clarifies that no new rights are created, nor are any existing rights modified, as they pertain to an individual’s ability to appeal a determination of the Secretary as a result of a check against the terrorist watch list. Information in the terrorist watch list database is highly classified, and no agency currently informs individuals if their names flag against a watch list, nor are they provided with an opportunity to appeal. DHS must have the discretion to work with law enforcement to respond appropriately if a name matches the watch list.

PETER T. KING
 LAMAR SMITH
 MARK E. SOUDER
 TOM DAVIS
 DANIEL E. LUNGREN
 MIKE ROGERS
 MICHAEL T. MCCAUL
 GINNY BROWN-WAITE
 GUS BILIRAKIS
 DAVID DAVIS
 PAUL C. BROUN

ADDITIONAL DISSENTING VIEWS OF MIKE ROGERS

Non-Toxic Fuel Exemption

The foal of the chemical security legislation is to create more secure chemical facilities. Section 2110, however, which requires consideration and possibly implementation of inherently safer technology, does not exempt users of non-toxic fuels. Unintended consequences of this provision may include severe financial losses and closure for some operations, disruption of business, and the ironically potential for increased chemical accidents.

With the bill’s current language, propane users would have to use and store less propane, or eliminate it altogether. Fuel switching will not necessarily increase security, as propane, a commonly-used fuel, is already among the safest, cleanest, and least toxic forms of energy available. Because the bill would require propane users to maintain smaller supplies on their premises, transport of propane to these facilities would increase. Thus, in an effort to make facilities safer, the liability has simply been shifted to the Nation’s roads and rails. A supply bottleneck might also result,

particularly in the winter months when demand for fuel is high, and supply is slowed by inclement weather. American agricultural and other business operations may be negatively impacted in these cases.

The final version of this bill should contain an exemption for a discreet subset of facilities, specifically, those that sell or use non-toxic fuels for the purposes of heating, cooking, agriculture, or motor fuel. This would enable users and producers of relatively safe fuels like propane to continue business operations that directly affect the livelihoods of many thousands of people, and indirectly impact the entire Nation's economic vitality.

MIKE ROGERS

ADDITIONAL AND DISSENTING VIEWS OF MICHAEL T. MCCAUL

Depleted Hydrocarbon Sub-Surface Geologic Formations

Insert at the appropriate place —

SEC. 2101. DEFINITIONS of the Committee print defines the term 'chemical facility' to include any "(A) at which a chemical is or may be used, stored, manufactured, processed or distributed". This broad definition of a chemical facility would include depleted hydrocarbon sub-surface geologic formations, salt water aquifers and salt domes.

The vast majority of working natural gas storage, 86% in fact, is in depleted hydrocarbon sub-surface geologic formations. These are depleted oil and natural gas fields. These formations are reachable only through surface facilities. The surface facilitates and equipment used to pump natural gas back into the sub-surface formation is the same surface facilities and equipment used to produce natural gas in the first place. When underground stored natural gas is retrieved it is "produced" a second time. If a sub-surface geologic formation used to store gas is considered a "chemical facility" then active oil and natural gas fields are "chemical facilities" too. The committee print does not currently seek to regulate oil and natural gas fields as chemical facilities when they are in production, but when they are used to store natural gas they become regulated.

Surface facilities (pumps, injectors, compressors, auxiliary tanks, Engine water coolers, etc) are regulated by the Department of Transportation through the Pipeline and Hazardous Materials Safety Administration (PHMSA) for safety. Under 49 CFR 192.903, PHMSA regulates these facilities for safe operation in proximity to populations areas (called high consequences areas (HCA)) using the consequence methodology in this regulation. The potential impact radius of an event in one of these facilities is among the detailed, existing aspects of PHMSA regulations produced under the Integrity Management Plan rulemaking in 2003.

The Transportation Security Administration regulates the same surface facilities, through which access to sub-surface geologic formations is obtained, for security purposes. TSA entered into a MOU with PHMSA in 2006. This MOU constitutes a security annex to the umbrella MOA that is in force between the Department of Homeland Security and the Department of Transportation. The Annex establishes the shared and cooperative framework

through which TSA and PHMSA discharge their obligations under the law for security and respectively safety for these surface facilities.

TSA has previously reviewed the security assessments prepared after September 11th for these surface facilities and determined the security measures put in place by facility owners/operators were satisfactory. TSA retains jurisdiction over these surface facilities for security and has the authority to increase security where it deems necessary and appropriate under current law.

States in which sub-surface geologic formation storage occurs for natural gas regulated the surface facilities' injection techniques and standards for safe and secure process. Effective Dates for selected examples of State Regulations for Hydrocarbons Storage Caverns: Alabama Alabama State Oil and Gas Board 400-6 (Gas) May 16, 2000; Kansas Kansas Administrative Regulation 28-45 (Liquids and Gas) 1984; Louisiana State Wide Order 29-M (Liquids and Gas) July 20, 1977; Mississippi Mississippi State Oil & Gas Board Rule 64 (Liquids and Gas) February 19, 1992; New York 6 NYCRR, Part 559 (Liquids and Gas) In Draft; Texas Railroad Commission Rules No. 95 (Liquids) and No. 97 (Gas) January 1, 1994

The Minority considers sub-surface geologic formations, salt water aquifers and salt domes to be adequately regulated under current law by PHMSA, TSA and the states. Applying an additional layer of federal regulation that is redundant within even the Department of Homeland Security does not serve to improve Homeland Security.

An additional later of redundant regulation will also harm our economy on this case.

The United States currently suffers from too little sub-surface geologic formation natural gas storage capacity. The House Commerce Committee, among other notable entities that include economists and natural gas market analysts, considers the current lack of additional storage a significant factor in concern over future shortfalls in supply that will negatively impact our economy. States that have both high-demand concentrations for natural gas for both industry and non-commercial use are particularly vulnerable to the consequences of growing likelihood of supply shortfalls from a lack of storage capacity.

MICHAEL T. MCCAUL

